THE LAW OF BUILDING AND LOAN ASSOCIATIONS IN PENNSYLVANIA

By

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To My

Father and Mother

This Volume is

Affectionately Dedicated

PREFACE

This book is offered to the public in the hope that it will supply the wants, which the writer believes to exist, of both layman and lawyer for a treatise on the law and business methods of domestic building and loan associations in Pennsylvania. There is no doubt that the public is vitally interested in these associations, both from a civic and financial standpoint. The last published report of the Commissioner of Banking (1911) shows that the assets of building and loan associations in Pennsylvania were at that time almost two hundred million dollars, and at the present time they are, no doubt, greatly in excess of that sum. The total number of associations given in that report was fifteen hundred and seventy-three, with almost five hundred thousand shareholders. An institution of such resources and with so great a number of persons interested in their welfare must of necessity have a tremendous moral and financial influence in the Commonwealth.

Foreign building and loan associations have been considered only incidentally, except that the act of May 11, 1901, P. L. 153, regulating the doing of business in this Commonwealth by such associations has been published in full in the appendix.

The writer desires to acknowledge his indebtedness to Leo G. Bernheimer, Esq., for many valuable suggestions and much help in the writing of this book.

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JOSEPH H. SUNDHEIM.

TABLE OF CONTENTS

CHAPTER I.

HISTORY AND DEFINITION.

CHAPTER II.

ORGANIZATION AND CHARTER.

CHAPTER III.

THE STOCK.

CHAPTER IV.

MATURITY AND PROFITS.

CHAPTER V.

OFFICERS, THEIR DUTIES AND COMPENSATION.

CHAPTER VI.

MEETINGS AND ELECTIONS.

CHAPTER VII.

AUTHORITY OF OFFICERS AND AGENTS TO BIND THE ASSOCIATION.

CHAPTER VIII.

LIABILITY OF OFFICERS AND MEMBERS.

CHAPTER IX.

LOANS.

CHAPTER X.

PAYMENTS TO THE ASSOCIATION AND THEIR APPLICATION.

CHAPTER XI.

THE PREMIUM.

CHAPTER XII.

FINES.

CHAPTER XIII.

FORFEITURE.

CHAPTER XIV.

THE BOND, MORTGAGE AND NOTE.

CHAPTER XV.

WITHDRAWALS.

CHAPTER XVI.

BORROWING MONEY.

CHAPTER XVII.

INSOLVENCY.

CHAPTER XVIII.

BY-LAWS.

CHAPTER XIX.

TAXATION.

APPENDIX

THE LAW

OF

BUILDING AND LOAN ASSOCIATIONS

IN PENNSYLVANIA.

CHAPTER I

HISTORY AND DEFINITION.

General History.

§ 1. Building and Loan Associations have long been an established institution among Anglo-Saxon and other peoples. Some writers trace their origin as far back as 200 B. C. E. and mention many successful Chinese societies. There is ample proof that they existed in some form in the early periods of Grecian history, and authentic records can be found of their existence in Germany and England over a century ago. The first society organized in this country was "THE OXFORD PROVIDENT BUILDING ASSOCIATION," of Frankford (now a part of the City of Philadelphia) organized January 3, 1831. According to the Frankford Herald of November 11, 1871, an initiation fee of five dollars was paid by each stockholder, and a further sum of three dollars per month upon each share of stock, the matured value of each share being five hundred dollars. This association paid off its stockholders the matured value and closed its affairs on the tenth of June, 1841, having run ten years and six months. A new

Association bearing the same name was immediately formed, and this was followed by another called the "Franklin" in 1845, having its shares one dollar per month, and its ultimate value two hundred dollars.

History in Pennsylvania.

§ 2. These institutions originally existed in Pennsylvania as unincorporated societies. In 1850 the first statute providing for their incorporation was passed. This act related only to the counties of Philadelphia, Schuylkill and Berks. The Act of May 7, 1855, P. L. 481, extended it to Lehigh, Northampton and Dauphin counties. By various other acts it was extended to other portions of the state. The act of 1850 required application to be made to the Court of Common Pleas of the proper county as prescribed by the act of the 13th day of October, 1840, and upon compliance with the provisions of that act the Court was empowered to grant the charter. The number of shares was limited to five hundred. By an act passed April 12, 1851, the limit was increased to twenty-five hundred shares. A new general act was passed April 12, 1859, which also provided for incorporation by the Common Pleas Courts and limited the number of shares to twenty-five hundred. Then came the general incorporation act of April 29, 1874, which repealed all previous legislation[1] and provided for incorporation by the Governor of the Commonwealth, which act, with its various supplements, has remained the law ever since. Both the legislature and the courts have treated these societies with great favor, which no doubt is the principal reason for their phenomenal growth.

[1] For a history of early legislation relating to building and loan associations see Rhoads vs. The Hoernerstown Building and Savings Association, 82 Pa. 180.

Definition.

§ 3. A building and loan association is a private corporation[2] for profit.[3] The members[4] or shareholders contract to pay certain fixed sums[5] at stated periods,[6] which sums are invested by the association by loaning or advancing[7] the funds so accumulated to its members at interest and sometimes with a premium for the use of the money in the purchase of real estate,[8] or other lawful purpose or business,[9] until the funds so accumulated, in any given series, together with all profits,[10] reach a certain fixed value per share,[11] when the stock is declared matured and the funds are divided among the shareholders in proportion to the number of shares held by each.

[2] It was said in Christian's Appeal 102 Pa. 184, quoting with approval the case of "Assigned estate of Nat. Sav. L. & Bldg. Assn. 9 W. N. C. 79," "Such an organization is, in fact and in law, a partnership, with corporate rights in which every stockholder is a member."

[3] There have existed in Pennsylvania unincorporated associations, but these are no longer in existence, as they would not enjoy the privileges and immunities of incorporated societies.

[4] The terms "members," "shareholders" or "stockholders" are used indiscriminately, but mean the same.

[5] Usually fifty cents or one dollar per share, but must not exceed two dollars per share. See act of April 29, 1874, P. L. 96, Sec. 37, Par. 2. Purden's Digest (13th Edition), Vol. 1, Page 549.

[6] Usually monthly.

[7] The words "loan" or "advance" mean the same. The word advance is used as the presumption is that when a member secures a loan an association is advancing to him only what ultimately will be due him.

[8] This was the original purpose of building and loan associations.

[9] A building association need not inquire for what purpose a loan to one of its members is obtained or what use will be made of the money. Johnston vs. Elizabeth B. & L. Assn., 104 Pa. 394. Juniata B. & L. Assn. vs. Mixell, 84 Pa. 313.

[10] When the stock is issued in series it means the profits apportioned to that series. In Rodgers vs. Southwestern Mutual S. F. & B. Assn., 7 W. N. C. 95, it was said that each series is an association by itself.

[11] Usually one or two hundred dollars or some multiple thereof, but may not exceed five hundred dollars. See act of April 29, 1874, P. L. 96, Sec. 37, Par. 2; Purdon's Digest (13th Edition), Vol. 1, Page 549.

The Name "Building and Loan Association" Misleading.

§ 4. The name "Building and Loan Association" conveys no exact idea of what an association is. It has no legal or practical significance except that by usage it has become descriptive of a peculiar class of corporations with especial rights and powers defined by statute. Many associations to-day do not use the word "building" in their corporate title, but style themselves as "Saving and Loan Associations," which is more descriptive and less misleading. The term "building and loan association" would seem to imply that they were engaged in the business of building. This never was true in Pennsylvania, although the act under which they are incorporated seems to give them that power. The borrower may, if he so desires, build a house with the money advanced, or he may use it in any trade or business. The association merely loans or advances the money, and the use to which it is put is none of its concern.[12]

Nature and Purpose of Associations.

§ 5. Building and loan associations in their very nature are semi-philanthropic institutions and have a twofold purpose, to encourage thrift and to encourage the borrowing of money for any lawful purpose, principally the purchase of a home. One of their main features is perfect mutuality, reciprocity and equality of all its members. Every gain and advantage or benefit must be shared equally by all its members, be they borrowers or non-borrowers. They have done more to encourage thrift, economy and saving among the people at large than any other institution of modern times. Great as has been their usefulness in the past, they have still greater possibilities for the future. They are the savings bank of the small investor, and their adaptability for that purpose has been fully demonstrated. They offer the best plan yet devised for people of small means to secure their own homes and for systematic saving of small sums of money. They are the most economically conducted financial institutions in the world, and have,

[12]Johnston vs. Elizabeth B. & L. Assn., 104 Pa. 394.

despite this, suffered the least financial loss. They have grown to such an extent in recent years that they no longer restrict their money to the home buyer, but loan their money to the mere investor or dealer in real estate. They are the holders of large mortgages secured upon factories and other business properties and rows of stores and dwellings. This is not an abuse of their powers or a departure from their main purposes, but only a natural and proper expansion along healthy and legitimate lines. All legislation in recent years has been to enlarge and broaden their powers, not to confine and restrict them. The courts have been liberal in the construction of these especially delegated powers, and as a result they have grown and changed as conditions required. Judge Endlich, no doubt the greatest authority on these institutions, well says in a recent case,[13] "It is, indeed, to be noted that the legislature has attempted no definition of what constitutes a building association. It has assumed that certain features and methods are essential to it, and there is no room for doubt that without them no corporation, whatever its label, can claim to be a building association. But it has not excluded the possibility that, consistently with these essential features, the legitimate development of the business of these associations may add others which, at the date of enactment, were not foreseen and against which, therefore, it is not to be taken as implying any prohibition."

Kinds of Associations.

§ 6. Under the laws of this Commonwealth two different plans are possible. They are known as the terminating plan and the serial plan. The terminating plan was the original and the simplest method of conducting an association, but it is not now used. The adjustment of profits was easy, as the value of every share of stock was always the same. The serial plan is an evolution of the terminating plan more suited to modern conditions and is now universally used, the terminating plan having been abandoned long ago. In fact, a serial association is merely a large number of terminating associations starting at regular

[13]Folk vs. State Capital Sav. and Loan Assn., 214 Pa. 529 (Page 532).

intervals.[14] There are several other plans upon which associations are conducted, but as they are rarely, if ever, used in Pennsylvania, they will not be considered.

The Terminating Plan.

§ 7. Under the terminating plan all shares of stock were issued as of the same date and, therefore, always had the same value. All members joined at the same time or, if they joined at a later date, they were compelled to pay in addition to the sums already paid by the original subscribers such interest or profits as would put them on the same basis as the original members. Year after year it became more difficult to become a shareholder, as the amount of money required to place the stock on an equal basis with the original issue reached such a high figure that it was almost impossible for people of moderate means to become members; so in its practical workings, an association organized on this plan is not one best suited to the class of people who most need the benefits to be derived from a building and loan association. When this single series of stock matured, the society terminated, in fact, the life of the association was usually limited by its charter. The disadvantages of this plan are obvious. In fact, it seems to have fallen into disfavor long ago, for an early writer[15] says: "This plan is very simple and seems easy of accomplishment. Practice, however, proves that it is seldom, if ever, carried out to the agreed point of termination, the difficulty being that after the fourth or fifth year the accumulating capital increases beyond the demand for it. By this time most of the members who desire it have been supplied with loans; and persons who would become members and borrowers cannot do so, owing to the heavy back payments required to equalize new shares with old ones; the result is a deadlock. It thus becomes necessary to enter into some plan of liquidation by which non-borrowing members are required to retire from the association, taking their accumulated capital and such portion

[14] Rodgers vs. Southwestern Mutual S. F. & B. Assn., 7 W. N. C. 95; Kurtz vs. Bubeck 39 Superior 370, (See Page 379).

[15] Edmund Wrigley on "How to Manage Building Associations," published in 1876.

of the profits as may be mutually agreed upon; thus absorbing the fund that otherwise would accumulate beyond all control or use for the legitimate purposes of the association; so that in place of running nine or ten years, and dividing to each share $200, as the theory promises, they are compelled to go into a liquidating process, and terminate in from six to seven years, giving to each share from $130 to $150. This is the natural and certain result of a plan based upon one issue of stock." This plan has been superseded by the serial plan.

The Serial Plan.

§ 8. The serial plan is now the only one used in the Commonwealth of Pennsylvania and is sometimes called the Pennsylvania plan. It is the natural evolution of the terminating plan. It retains all the good features of the terminating plan while eliminating most of the objections to it. The charter of the association is usually perpetual, and the association is constantly securing new members who are glad to benefit by this flexible scheme of corporate co-operation, already organized with all the machinery necessary for conducting an association. Under this plan stock is issued in series at various periods; annually, semi-annually, quarterly and in some few cases monthly. Persons desiring to join pay back to the beginning of the current series only. This enables a person to become a member without making large back payments. The six months period is the one most generally used. The series are numbered and are designated as first series, second series, third series and so on indefinitely. Each series of stock is of a different value and, therefore, matures at a different time. Each series dates back only to the time of its issue and runs its course independently without interfering with the others issued before or after it. Each series is retired at maturity, leaving the remaining assets to those who con-

tinue the business and so on indefinitely. The profits are apportioned annually, sometimes oftener, among the shares in the different series according to the time the series has run and the number of shares in the particular series. When the instalments paid by and profits apportioned to the shares of any given series equal the par value of the shares, they are declared matured and the borrowers in that series are entitled to have their mortgages satisfied and the non-borrowers are entitled to the value of their shares in cash.[15] Loans are made to members irrespective of the series to which they belong so long as the security is ample.

[15] Mercer vs. Amber B. & L. Assn., 10 C. C. 51.

CHAPTER II
ORGANIZATION AND CHARTER.

Preliminary Organization.

§ 9. Like all other human institutions a building and loan association must have a beginning. Someone must start it and interest others. Some of those interested should have had some experience in the work. A meeting should then be called for the purpose of effecting a preliminary organization. This meeting should be well advertised so as to attract men who would make desirable officers or members. Too much care cannot be exercised in selecting the preliminary officers, as they leave the impress of their character and ability through all the future years. Good men attract good men to the association. Those who attend the meeting should elect temporary officers, who in turn can receive subscriptions for stock, and payment of the subscription fees and first month's dues. This creates a fund out of which preliminary expenses can be defrayed. Temporary rules and regulations should be adopted so as to control and regulate the actions of the officers and subscribers until the charter is granted and accepted and permanent by-laws adopted. A reputable attorney should be selected to procure a charter and attend to other matters of a legal nature. The responsibility of the promoters and subscribers in case a charter is not procured and the expenses assumed by the corporation opens up such a wide field and is of so little importance in forming a building and loan association that it need not be considered.

It is wonderful how quickly the ordinary man, once he becomes an officer or director of an association, learns and masters the details of the work. Those who knew nothing at the beginning often become the best officers. The

plan is simple in its operation and fascinates many who cannot be prevailed upon to take an interest in anything else outside of their daily occupations. To this class it is a healthy and interesting diversion. Of course, many worthy men earn their livelihood in the employment of building and loan associations, or augment their income from this source, but the compensation is usually much less than is received from other occupations requiring the same amount of labor, knowledge or skill. Results show that a medium sized association is capable of earning as much money and maturing its stock as quickly as a large one. Mere bigness is not an element of success.

Fraternalism of Associations.

§ 10. One of the principal and distinctive features of a building association is mutuality. There must be an equal benefit and liability to the holder of every share of stock, whether the stock be free or whether an advance has been made upon its security.[1] In order to be a success there must be harmonious co-operation, and a spirit of fair play among the stockholders that is not required or possible in any other kind of a corporation for profit. It is similar to a fraternal organization in many respects. The members should seek no undue advantage over each other, and remember the fact that money making is not the only end in view. It is this spirit that has made the institution the great success that it is today and has caused the legislature and the courts to treat it with especial favor.

Comparison With Other Corporations.

§ 11. It must always be borne in mind that building and loan associations are corporations, although the courts in some cases in order to do equity between the members themselves, and between the members and the association, have styled the organization in fact and in law a partnership with corporate rights, in which every

[1] Building Ass'n, 30 C. C. 616; 14 D. R. 80 (opinion of Atty. Gen. Carson).

stockholder is a member.[2] They are corporations in the nature of partnerships and, therefore, much of the law applicable to ordinary corporations has no application to them, yet they are corporations for profit and are subject to the constitutional provisions and general laws relating to corporations unless they are especially excepted, and the method of organization and procuring a charter is the same as in all other cases except that no bonus need be paid on the capital stock. Much legislation has been passed for their especial benefit, such as exemption from taxation,[3] giving them the right to charge premiums[4] in excess of legal interest, and with certain restrictions to fine[5] their members for not paying the instalments on stock when due. It will, therefore, be seen that a knowledge of general corporation law is necessary to a thorough knowledge of the law pertaining to building and loan associations; but it would be impossible and impracticable to consider these laws in a book of this kind. The purpose of the writer is merely to cite and consider as far as possible only those principles, statutes or decisions that have reference or particular applicability to building and loan associations, referring the reader to the many able treatises on the subject of corporations generally on subjects that affect all corporations alike.

Act Under Which Associations Are Incorporated.

§ 12. The early associations were conducted through the medium of trustees, without the aid of legislation. As their number increased, the legislature provided for their incorporation. The first legislation was simple and crude in its provisions, and provided for associations with aims far different from the associations of today. Now all associations must be chartered under the general incorporation act of 1874, P. L. 73, and its supplements. There are some, however, which were incorporated under prior

[2] In re Assigned Estate of the National Saving, Loan and Building Association, 9 W. N. C., 79; Christian's appeal, 102 Pa., 184, see page 189.

[3] See Section 137.

[4] See Section 90.

[5] See Section 95.

acts and which would not, therefore, be subject to the act of 1874 unless they have accepted its provisions.[6] This may be done by resolution or custom.[7] For all practical purposes it may be stated that all associations are subject to that act. They have all the powers and limitations and are subject to the same restrictions and regulations as all other corporations authorized by the general incorporation act and its supplements except in so far as the powers are especially enlarged or restricted by that act or legislation pertaining especially to them.[8]

Procuring Charter.

§ 13. The first step to secure a charter for a building and loan association is to file with the Secretary of the Commonwealth[9] an application[10] which must distinctly set forth the following facts:

1. The name of the proposed association.[11]
2. The purposes for which it is formed.[12]
3. The place where its business is to be transacted.[13]
4. The term for which it is to exist.[14]
5. The name and residence of the subscribers and the number of shares subscribed by each.[15]

[6] Lynn vs. B. & L. Assn., 117 Pa. 1; act of 1876 P. L. 30, Sec. 6.

[7] Nat. S. F. & B. Assn. vs. Robinson, 19 Phila. 358.

[8] Folk vs. State Capital S. & L. Assn., 214 Pa. 529.

[9] Printed forms of the application can be had on request to the Secretary of the Commonwealth.

[10] For a statement of the number of subscribers necessary, affidavits, etc., see People's Gas Light and Fuel Co. of Bucks Co., 12 D. R. 184.

[11] The name must not be similar to that of any other corporation. In re Waverly Ladies of the Red Cross, 12 C. C. 589. It is usual first to write to the Secretary of the Commonwealth and ask if he knows of any objection to the proposed name, but the name need not be in the English language. See Deutsch-Amerikanischer Volksfest-Verein, 200 Pa. 143.

[12] To conduct a regular building and loan association business according to law.

[13] Usually a city or town in Pennsylvania. No loans should be made outside of the State, as that would subject the association to taxation on such loans.

[14] Usually perpetually.

[15] A married woman may be a subscriber, incorporator or officer. See Married Women Corporators, 18 Pa. C. C. 492.

6. The number[16] of its directors and the names and residences of those who are to be directors for the first year.[17]
7. The amount of its capital stock and the par value into which the shares are divided.[18]
8. Whether the premium or bonus is to be paid in advance or in instalments.[19]

Merger of Associations.

§ 14. Any two or more building and loan associations may merge or consolidate, but an association cannot merge with any other kind of corporation. The merger of small associations, or of a small association with a large one, is sometimes beneficial. The directors of each association must enter into a joint agreement under the corporate seal of each association, for the merger and consolidation, prescribing the terms and conditions thereof and the mode of carrying same into effect, which must be ratified by the stockholders of each association at a special or regular meeting after due advertisement. What this agreement must contain, the manner of procedure, the rights and remedies of dissenting stockholders and all steps necessary to accomplish the consolidation are fully set forth in the Act of May 3, 1909, P. L. 408.

[16] Thirteen, fifteen or seventeen directors have been found most satisfactory.

[17] The directors named in the application need not hold office for one year. New directors may be chosen immediately after incorporation. Com. vs. Helms et al.; 8 C. C. 410.

[18] The usual sum is $200, but any other sum can be made the par or ultimate value not exceeding five hundred dollars. See Sec. 37 act of April 29, 1874, Par. 2; see appendix section 144.

[19] The premium bid, if any, is usually a stated sum per share agreed to be paid monthly in addition to the dues, and interest. This sum is arrived at by competitive bidding for preference or priority of loan or advancement. Some associations, however, bid for one lump sum to be deducted in advance; in case of repayment, however, before maturity, a proportion of the premium must be returned. See Act of April 10, 1879, Sec. 4, P. L. 16; Purdon's Digest (13th edition), Vol. 1, Page 552; see appendix section 155.

CHAPTER III
THE STOCK.

The Capital Stock.

§ 15. While in many respects the capital stock of a building and loan association is similar to the capital stock of any other corporation, it is in some respects dissimilar, and the greatest difference is in the manner and method of paying for the stock. As a general rule the stock of a corporation is paid for in one lump sum, or any balance due is subject to the call of the board of directors by assessment. In a building association, except in a few instances, which will be considered later,[1] the stock is paid for in periodical instalments, according to the charter and by-laws, and when the payments, together with the profits, equal the par value it is retired. No dividends are declared, but profits are allowed to accumulate. Another peculiar feature, true only of this kind of stock, is that, subject to certain restrictions, it can be sold back to the association at any time, and the corporation is compelled to buy at what is known as the "withdrawal value."[2] When the stock reaches par value the stockholder is paid the amount due, his stock is cancelled, and he is compelled to withdraw from the association and ceases to be a member unless he is the holder of other stock in another series.

Amount of Capital Stock.

§ 16. The amount of the capital stock of a building and loan association seems to be limited in the first instance to one million dollars;[3] it may, however, be subsequently increased to any amount that the business of the associa-

[1] See Section 17.

[2] See Section 118.

[3] Act of April 29, 1874, P. L. 73, Sec. 37, Par. 2. See appendix Sec. 144.

tion requires.[4] A majority vote of the entire stock issued both in number and value is required to consent to an increase of the capital stock. The stock may be issued in series, but no series may at any time exceed in the aggregate five hundred thousand dollars,[4a] and no periodical payment of instalments may exceed two dollars on each share.[5] The stock may be retired and paid off as the by-laws direct, and new shares may be issued in lieu of shares withdrawn or forfeited.[6] In computing the amount of outstanding stock the ultimate or par value must be counted and not the paid in or withdrawal value,[7] but the cash value or the amount actually paid in on the shares is the standard of valuation for taxation,[8] or for determining the value for the purpose of charging fees under the banking act of February 4, 1895, P. L. 4, Sec. 4.[9]

Full Paid Stock.

§ 17. Full paid stock, or, as it is sometimes called, prepaid stock, is provided for by the by-laws of some associations. The member pays the matured or par value at the time of its issuance, or the balance due at some later period, and is thereupon entitled to receive in cash all dividends declared thereon, subject to such conditions or limitations as the by-laws may provide. In some instances these shares participate in the profit as fully as regular instalment shares; but in most cases a fixed rate of interest is allowed.[10] The advantage to be derived from the issuance of this class of stock is that it enables an association to procure money from investors to loan to its members,

[4] Act of May 3, 1899, P. L. 189, Sec. 2.

[4a] The association may issue any number of shares to any one person or in any one series unless a resolution or by-law restricts it, provided the entire issue of stock of any one series does not exceed five hundred thousand dollars, or the entire issue does not exceed the authorized capital of the association. See Gallagher vs. McAdams, 49 Superior, 81.

[5] The instalments, together with the interest and premium, may exceed two dollars per share.

[6] Act of April 29, 1874, P. L. 73, Sec. 37, Par. 2; Appendix Sec. 144.

[7] "Building Assn. Shares" 29 C. C. 150; 13 D. R. 698.

[8] Pottsville Nat. Sav. Fund vs. Com. 4 Penny. 194; 2 Chester Co. 546.

[9] Building Assn. Banking Fees, 17 C. C. 62; 4 D. R. 629.

[10] Heptasoph B. & L. Assn. vs. Linhart, 4. Dist., Rep. 620.

which otherwise it would not have owing to the great demands upon its treasury. The issuance of this class of stock and the dividends to be declared thereon, have been limited and defined by judicial decisions. There is no legislation providing for its issuance except the general provision contained in Paragraph 7, Sec. 1 of the corporation act of April 29, 1874, P. L. 73, which provides that corporations formed under it shall have the power "To enter into any obligation necessary to the transaction of its ordinary affairs."[11] The conditions upon which such stock may be issued have been stated in a leading case[12] to be:

1. The dividends must not be guaranteed but payable out of the profits only.
2. In case of loss or insolvency the holders thereof may be entitled to no preference or advantage over the other stockholders.[13]
3. The issue of such stock must be incidental to the main business of the association and intended to provide a fund from which loans may be made to the holders of instalment stock.[14]

The act of June 22, 1897, P. L. 178, provides for a tax upon all full paid, prepaid, and fully matured or partly matured stock in any building and loan association upon which annual, semi-annual, quarterly or monthly cash dividends or interest is paid.[15]

[11] Folk vs. State Capitol Sav. Assn. 214 Pa. 529.

[12] Id.

[13] See Criswell's Appeal, 100 Pa. 488.

[14] In an opinion by Attorney General Elkin, 8 D. R., 567, he said: "The issuance of full paid and prepaid stock should not at any time be permitted to become the principal business of the association, and at no time should there be more prepaid and full paid stock issued then there is instalment stock outstanding."

[15] This is the only statute that mentions full paid, prepaid or fully matured stock. This act imposes a tax upon that kind of stock, and it is argued that as it cannot be assumed that the legislature meant to tax stock unlawfully issued, it must have considered that kind of stock authorized by the act of 1874. Folk vs. State Capitol Sav. Assn., 214 Pa., 529, see page 538.

Certificates of Stock.

§ 18. Many associations do not issue stock certificates even when demanded by the stockholders. This is in violation of the act of June 24, 1895, P. L. 258, which provided, "Any stockholder of any company incorporated under the laws of this Commonwealth shall be entitled to receive a certificate of the number of shares standing to his, her or their credit on the books of the corporation, which certificate shall be signed by the president or vice-president or other officers designated by the board of directors, countersigned by the treasurer and sealed with the common seal of the corporation." The stockholders' own protection is the reason why some associations do not issue stock certificates, as the members, not appreciating their importance, often lose them. The possession of the stock certificates is evidence of ownership, but as between the members and the association the stockbook is the evidence of their relation and the certificate is merely secondary evidence, but the holder of the certificate together with a power of attorney may compel a transfer to him on the books of the association,[16] provided the transfer is otherwise in accordance with the by-laws of the association.

Transfer of Stock.

§ 19. As already has been said, building and loan association stock may be sold to the association at any time at the withdrawal value. But this does not prevent the holder from transferring the stock to a third person, subject to the by-laws of the association. Certificates of stock are transferable at the pleasure of the holder, in person or by attorney, duly authorized, as the by-laws may prescribe; subject, however, to all payments due or to become due thereon; and the assignee, or the party to whom the stock is transferred, becomes a member of the association with the same rights, privileges, and liabilities and penalties as the original subscriber.[17]

The act of May 5, 1911, Sec. 15, P. L. 126, provides:

"There shall be no lien in favor of a corporation upon

[16] Act of May 5, 1911, P. L. 126.

[17] Act of April 29, 1874, Sec. 7, P. L. 78; Purdon's Digest (13th Edition), Vol. 1, Page 801.

the shares represented by a certificate issued by such corporation, and there shall be no restriction upon the transfer of shares so represented, by virtue of any by-law of such corporation, or otherwise, unless the right of the corporation to such lien or the restriction is stated upon the certificate." This act no doubt applies to building and loan associations. The association has no lien upon the stock of a member, unless it is specifically assigned as security for the indebtedness and, therefore, cannot refuse to transfer the stock unless it is so assigned.[18] If an association refuses to transfer stock in a case where the transferee is entitled to have it transferred, a bill in equity will lie to compel the transfer. The jurisdiction of equity attaches by reason of the fact that there is no method by which the damages of the transferree can be ascertained.[19] There is, of course, also the common law remedy and the damages would be the value of the stock at the time of the refusal to transfer.[20]

[18] Act of June 24, 1895, P. L. 258.
[19] Winn vs. New Southwark B. Assn., 20 D. R. 625.
[20] German Union B. & S. F. Assn. vs. Sendmeyer, 50 Pa. 67.

Transfer of Stock Held in Trust.

§ 20. All certificates of stock are transferable by the legal owner thereof, without any liability on the part of the association, to recognize or see to the execution of any trust, whether expressed, implied or constructive, to which such stock may be subject, unless the association shall have received previous actual notice in writing, signed by or on behalf of the person or persons for whom such stock appears by the certificate thereof, to be held in trust, that the proposed transfer would be in violation of such trust,[21] and if the association receives no notice from persons interested, that any trust or duty would be violated if the transfer were made, and the association does not charge that the transfer is requested for improper or fraudulent uses, the trustee can demand the transfer as a right and the courts will enforce it.[22]

[21] Act of May 23, 1874, P. L. 222; Purdon's Digest (13th Edition), Vol. 4, Page 4850.
[22] Miller vs. Westmoreland Coal Co., 40 C. C. 399.

Method of Transferring Stock.

§ 21. The by-laws should regulate the manner and the conditions upon which stock of the association may be transferred. As few restrictions as possible should be imposed so as to make the stock a marketable asset. Stock that can be easily and freely transferred is generally more valuable than stock upon which conditions are imposed. The restriction must be endorsed upon the stock certificate. The act of May 5, 1911, P. L. 126, known as the "Uniform transfer act," contains a complete recital of the method of transfer and what amounts to transfer of stock.

Lost or Destroyed Certificate.

§ 22. Section 17 of the Act of May 5, 1911, P. L. 126, provides a method to compel the issuance of a new certificate in place of the one that has been lost or destroyed.

"Where a certificate has been lost or destroyed, a court of competent jurisdiction may order the issue of a new certificate therefor on service of process upon the corporation and on reasonable notice by publication, and in any other way which the court may direct, to all persons interested, and upon satisfactory proof of such loss or destruction, and upon the giving of a bond, with sufficient surety to be approved by the court, to protect the corporation or any person injured by the issue of the new certificate from any liability or expense which it or they may incur by reason of the original certificate remaining outstanding. The court may also, in its discretion, order the payment of the corporation's reasonable costs and counsel fees.

The issue of a new certificate under an order of the court, as provided in this section, shall not relieve the corporation from liability in damage to a person to whom the original certificate has been or shall be transferred, for value, without notice of the proceeding or of the issuance of the new certificate."

This does not prevent the issuance of a new certificate in a proper case, and with proper proof of loss or destruction, and security or bond to protect the association against loss without resorting to legal proceedings.

CHAPTER IV
MATURITY AND PROFITS.

What Is Maturity.

§ 23. A series of stock is said to be matured when the instalments paid together with the profits apportioned to it equals the par value of the stock as fixed by the charter of the association; and it is then the duty of the board of directors to declare the stock of that series matured and direct the satisfaction or return of securities held as collateral to loans and the payment to non-borrowers of the amount due them. When the board of directors has declared stock matured the owner of free shares is entitled to the full value in cash,[1] and a by-law requiring the holder to bid for priority of payment is of no effect.[2] An endorsement on the certificate that it is guaranteed to mature in a certain number of years, unless sooner retired, is merely an estimate of the time of maturity, otherwise it would be entirely inconsistent with and repugnant to the rest of the contract.[3]

Failure to Declare Stock Matured.

§ 24. If the board of directors neglect or refuse to declare stock matured when by a fair and equitable method of distributing the profits, it attains its par value, a stockholder would be entitled to a mandamus to compel the corporation to make a proper application and division of profits and to declare the stock matured, or he might file a bill in equity for a like purpose; but he is not bound to assume the position of an actor and involve himself in the expense attendant upon either of these proceedings;

[1] Mercer vs. Amber Bldg. & Loan Assn. 10 C. C. 51; 2 Lack. Jur. 123.
[2] Rodgers vs. Southwestern Mutual S. F. & B. Assn., 7 W. N. C. 95.
[3] McKean vs. New York B. & L. Assn. 10 D. R. 197.

for if his stock has matured he is entitled to stop paying and rely upon the surrender of his securities by the association at the proper time; and if, instead of so doing, the association brings suit thereon, he may set up an equitable defence and show that the stock has matured, such defence being a substitute for a bill in equity for that purpose. When stock has matured the debt of a borrowing stockholder is paid and if such maturity has occurred in fact, even though not declared by the association, it has no right to recover judgment against one of its stockholders for the amount of his loan.[4] The burden of proof of the maturity of the stock is on the defendant alleging it as a defence when sued by the association.[5]

Stock Improperly Declared Matured.

§ 25. It is also true that the board of directors can be prevented from declaring stock matured which in fact has not matured, or if it has already been declared matured the officers can be enjoined from making payment, and if payment has already been made and thereby the association has become insolvent the payments so improperly made can be recovered by a bill in equity in which all the members of the particular series are made defendants for the purpose of recovering from them the over-payments which they received,[6] but assumpsit will not lie against any particular member to recover overpayments made in settlement for his stock, it being impossible thereby to work out the equities of all the stockholders.[7] If upon information fraudulently furnished by the secretary, shares are declared matured which in fact have not matured, and a mortgage is satisfied as a consequence, the satisfaction will be stricken off, for the equities between the members of an association will not allow one of them to escape his share of the common burdens under a mistaken satisfaction of his mortgage as a borrower.[8] If the directors declare stock matured when the condition of the association does not justify

[4] Charles Tyrrell L. & B. Assn. vs. Haley, 139 Pa. 476.
[5] Watkins vs. Workingmen's B. & L. Assn. 97 Pa. 514.
[6] Kurtz vs. Bubeck 39 Superior Ct. 370.
[7] Armstrong vs. Long 21 D. R. 512.
[8] Callahan's Appeal 124 Pa. 138.

it, they are not liable in the absence of fraud or such gross negligence as would amount to fraud and they have a right to rely on the reports of their officers and auditors.[9]

Right of Holders of Matured Stock in Contingent Fund.

§ 26. Prior to the Act of May 14, 1913, No. 144, the rights of holders of matured stock in the contingent or reserve fund, maintained by some associations, was a much mooted question, and was, to say the least, of doubtful legality.

The maintenance of such a fund under certain restrictions is authorized by section 1, paragraph "A," of that act, which provides:

"Be it enacted, etc., THAT it shall be lawful for any mutual savings fund or building and loan association, now incorporated or hereafter to be incorporated:

"To set aside from the net profits a sum not to exceed five per centum thereof each year as a reserve fund for the payment of contingent losses until the total amount of such fund so set aside shall equal five per centum of the assets of such association. Provided that no association shall reduce the dividend or interest payable on voluntary withdrawal, as fixed by the board of directors or its by-laws for that purpose; and all such funds heretofore accumulated by any such association from its profits not in excess of five per centum of the assets are hereby confirmed and made valid.

"Provided, however, that if at any time the assets of the association shall become reduced in amount and the contingent fund should thereby exceed five per centum of the remaining assets of the association, then at the next dividend period the amount in excess of five per centum in said contingent fund shall be transferred to the general profit account of such association."

It will be seen that it is optional with the association whether to maintain such a fund or not, but justice and good business policy seem to require it. The retiring stockholder must be paid the value of his stock in cash and leave for those remaining a large number of securi-

[9] Com. vs. Anchor B. & L. Assn. 20 Superior 101.

ties and perhaps some real estate purchased to protect the association's interest. How much will be realized on these securities or real estate no human foresight can tell. Further, the realizing on these securities may cause considerable litigation and expense. There are many other contingencies which might cause a shrinkage in the association's assets, such as defective titles, undisclosed defalcations on the part of an officer, a miscalculation of assets and liabilities, and many other errors and omissions which must always be reckoned with in the conduct of human affairs.

The contingent fund is merely insurance against possible loss. That losses may occur from time to time seems almost inevitable and it is, therefore, inequitable that the remaining stockholders should be compelled to accept all securities at par, so, to say the least, the maintenance of this fund is justified. The association teaches the duty of providing for the proverbial rainy day. Why should it not provide for the hour of adversity? The reserve fund has protected the maturing or withdrawing member during the period of his membership. In case of loss it has, or would have, reimbursed him and, at all times, it has protected him and given strength and standing to the association. Losses may occur after his membership ceases, that arose from some mistake or mismanagement committed during the period of his membership, and in fairness and equity the remaining members should have some protection against this.[11]

Value of Stock Before Maturity.

§ 27. The value of stock before maturity is generally fixed by the by-laws or by the board of directors under authority conferred by the by-laws. This is known as the withdrawal value.[11] The ascertainment of the real value of the stock can be arrived at only by closing up the affairs of the corporation and this no member has a right to ask.[12]

[10] The act legalizes such funds accumulated before its passage, provided they are not in excess of the amount authorized.

[11] See appendix, section 180.

[11] See section 118.

[12] Watkins vs. Workingmen's B. & L. Assn. 97 Pa. 514.

Evidence as to the market value of shares, or the amount of the assets of the association as affecting the value, or as to the number of members who, having defaulted in the payment of premiums, have increased the value of the capital stock by failing to reclaim the premiums already paid by them, thus rendering their stock liable to forfeiture, when offered by a member in a suit by the association against him, is wholly irrelevant and should be excluded.[13] A defaulting borrower is not entitled to any profits but credit only for the amount actually paid in.[14] The credit he is entitled to is ascertained by the amount paid in, excluding interest or profits, less his share of the expenses or losses.[15]

Methods of Ascertaining Value of Stock.

§ 28. There are various methods of calculating the "profits"[16] on stock and, according to the method used, a larger or smaller percentage of gain may be claimed in different associations, although the actual earnings may be the same. Some associations reapportion all the profits among all the series, at the end of every period, basing their calculations upon the amount actually paid in and the length of time the money has been invested.[17] This method does not consider "profit on profits" except to the extent that the percentage of profits is larger because the capital account is less. By this method a slight injustice is done to the early series of stock, but after the association has been in existence for some time it adjusts itself and is considered the fairest and best method of calculation.

The other method is to base the calculations at the end of every period upon the "book value"[18] of the last prior period, using that value as a new capital account, and distributing the profits of the period just closed, to each

[13] Id.

[14] Id; Folsom Bld. & Loan Assn. vs. Gogel 24 Superior 539.

[15] Building Assn. vs. Groesbeck, 41 Legal Int. 16.

[16] The report of the United States Commissioner of Labor (1893) says "Investigation discloses twenty-five different rules or methods of distribution of profits."

[17] This is known as the partnership plan.

[18] The "book value" must not be confused with the "withdrawal value." See post, sec. 118.

series in the proportion that the capital account of the series bears to the profit of the current period. This method, while perhaps the more fair and proper from an investment standpoint, is much more complicated than the one first described, and involves much more labor for the officers, the auditing committee and especially the secretary, in addition to which this method makes no allowance for a great loss or an unusual profit during any period. If losses occur the recent series are made to bear an undue proportion, and perhaps show very little or no profit,[19] although the bad investment may have been made before they were issued. If a method of calculation is used that is grossly unfair the court will set it aside and use some approved method in order to determine whether the stock has matured or not.[20] The fact that a share-

[19] If the rate of gain each year was exactly the same there would be no practical difference in the result. But this is not to be expected. One year there may be an unusual amount of withdrawals, bringing in gains, and another year very little from that source. A loss may happen from an old transaction, cutting out the profits of the current year. As an example, suppose the following to be the values at the end of the second year:

Dues paid.	Gains.	Values.
$24	$1.60	$25.60
12	.40	12.40

A new series is issued, and this, as well as the two above shown, each pay in twelve dollars during the year. There being no gain, as stated for the current year, in a "profit-on-profit" division, the old values would remain, with only the dues added, namely:

Dues paid.	Gains.	Values.
$36	$1.60	$37.60
24	.40	24.40
12	None	12

Rate of gain credited:

$36	18 months	4.94 per cent.
24	12 months	2.80 per cent.
12	6 months	None

The partnership division would show:

Dues paid.	Gains.	Values.
$36	$1.28	$37.28
24	.57	24.57
12	.14	12.14

[20] Charles Tyrell L. & B. Assn. vs. Haley, 163 Pa. 301. In this case, after disapproving of the method used by the association, the Court adopted the partnership plan in order to ascertain the value of the stock. In the course of its opinion the Court attempted to describe the method used, but it is respectfully submitted that it is unintelligible.

holder has for a number of years acquiesced in an improper method used by the association, will not stop him from requiring that the method be changed to a proper one.[21]

To Whom the Profits Belong.

§ 29. It is true of a building and loan association as it is of every other corporation that the profits belong to the stockholders; but the right of a shareholder to profits in a building association differs essentially from those of a stockholder in an ordinary corporation. Stockholders have a right to take such proportion of the profits as the by-laws provide at any time by withdrawing from the association and at maturity they are compelled to take their investment and profits and withdraw from the association. Dividends are never declared, but earnings are allowed to accumulate until maturity, and reports showing profits before that time are paper profits only and cannot be claimed. A borrowing stockholder in default is entitled to no profits.[22] Earnings on stock made subsequent to the death of the holder is income and belongs to the life tenant and not to the remainderman.[23]

[21] Charles Tyrell L. & B. Assn. vs. Haley, 163 Pa. 301.

[22] Watkins vs. Workingman's B. & L. Assn., 97 Pa. 514. Folsom B. & L. Assn. vs. Gogel, 24 Superior 539.

[23] Eltons Estate, 1 D. R. 458.

CHAPTER V

OFFICERS, THEIR DUTIES AND COMPENSATION.

Necessity of Officers.

§ 30. A building and loan association being a corporate organization can act only at a regular or special meeting of its members, through its board of directors, or by its duly authorized officers and agents. The by-laws should name the officers of the association and define their duties. This is provided for by the act of April 29, 1874, Sec. 37 P. L. 73, par. 3,[1] as follows:—

"The number, titles, functions and compensations of the officers of any such corporation, their terms of office, the times of their elections, as well as the qualifications of electors, and the ratio and manner of voting, and the periodical meetings of the said corporation, shall be determined by the by-laws, when not provided by this act."

The extent of an officer's authority to bind an association can be shown to be greater than is given in the by-laws and is generally a question of fact for the jury.[2] The relationship that exists between an officer and the association is one of confidence and trust, and he cannot, therefore, take advantage of knowledge gained by virtue of his position and use it for his personal benefit.[3]

[1] Purdon's Digest (13th Edition), Vol. 1, Page 549; see appendix section 145.

[2] Home B. & L. Assn. vs. Kilpatrick, 140 Pa. 405.

[3] Quein vs. Smith, 108 Pa. 325.

Usual Officers.

§ 31. The usual officers[4] of a building and loan association are a president, vice-president, treasurer, secretary,[5] and as many directors as are authorized by the charter, and also one or more solicitors and conveyancers.[6] When the president, vice-president, treasurer or secretary are elected by the members they become by virtue of their position members of the board of directors. Sometimes the members elect the board of directors and they in turn elect the officers. Under these circumstances the secretary is not always a member of the board. There is no fixed rule, however, and the whole question is governed by the by-laws of the particular association.

Duties in General.

§ 32. The success of an association depends upon the fidelity and vigilance of each individual official. For the same reason that a capable officer can make an association a success, a faithless one can make it a failure. This statement cannot be too often repeated. An officer who is imbued with the responsibility of his position is an invaluable asset, but in no case should one or two men be left in practical control of the association's business. An association so controlled is in danger, and more associations can trace their failure to this cause than all other causes combined. An officer who neglects his duty does more harm than if his place were vacant, for when vacant the shareholders are not lulled into security by believing that he is guarding their interests. No association is so large that every official cannot know something and some official everything concerning every important matter or loan. The duties of each officer are generally prescribed by the by-laws and what is said in

[4] No individual may at the same time hold more than one of the offices of president, vice-president, secretary, treasurer or solicitor. Act of April 29, 1909, P. L. 289; see, however, opinion of Asst. Atty.-Gen. Hargest, 19 D. R. 382; 37 C. C. 193.

[5] Large associations sometimes have an assistant secretary.

[6] The office of solicitor and conveyancer is often held by one person; he is not, properly speaking, an official, but merely acts in a representative capacity. Although it is not prohibited, he should not be a member of the board of directors.

the following paragraphs is to be understood to be subject to the by-laws of any particular association, they being supreme on this subject.

Duties of the President.

§ 33. The president is the titular head of the association. It is his duty to preside at all meetings of the stockholders and the board of directors, unless the question before the body is one in which he has a personal interest, when the vice-president should preside. It is his duty to call special meetings of the members, or the board of directors, whenever the business of the association requires it. He should appoint all committees unless the by-laws provide otherwise. He should sign all orders on the treasurer for the payment of money and all written instruments to be executed by the association,[7] including certificates of stock.[8] He should have the custody of the official bond and all obligations and securities given to the association by the treasurer.

Duties of the Vice-President.

§ 34. The duty of the vice-president is to perform the duties of the president in case of his resignation, death, absence, inability to act, or in case the president has a personal interest in the particular matter being considered.

Duties of the Treasurer.

§ 35. The treasurer should receive[9] and take charge of all moneys paid to the association; and should pay it out only on an order signed by the proper officials as

[7] He should not sign personally, but as president of the association, placing the name of the association above and his title below his signature.

[8] Act of June 24, 1895, P. L. 258; Purdon's Digest (13th Edition), Vol. 1, Page 802.

[9] The actual receipt of the money is often entrusted to a finance committee, appointed permanently, or especially for each meeting, or, as is done in a great many associations, one director calls the stockholder's name and book number and amount paid; another director receipts the book, while the treasurer receives the money, and the secretary records the payment in a book provided for that purpose. Frequently another director or an assistant secretary keeps a duplicate of the secretary's book, in order to insure accuracy and to act as a check on the secretary's book. At the close of the meeting the treasurer gives the secretary a receipt for the entire receipts of the meeting. There are other methods, but, in the writer's opinion, this one is the most satisfactory.

authorized by the by-laws. The money received should be deposited in a separate bank account in the name of the association. The treasurer should receive and hold in trust for the association all obligations, securities, policies of fire and title insurance and all other papers belonging to the association, except his own bond and all obligations and securities given by him. He should give a report of the finances of the association at every regular meeting of the members and of the board of directors, and at other times when required.

Duties of the Secretary.

§ 36. The secretary should be present at all meetings of the association and of the board of directors and should keep and record accurate minutes of the proceedings of all such meetings. He should keep accurate accounts and be prepared at all meetings, both of the stockholders and directors, to give a statement of the financial condition of the association, and at the annual meeting, and at all other times, when ordered to do so by directors, he should furnish a detailed statement thereof. He should attend to the transfer and cancellation of all certificates of stock, draw and sign all orders on the treasurer for the payment of money when properly authorized by the board of directors. He should have the custody of the corporate seal, and all books and papers belonging to the association not pertaining to any other office. He should attest the president's signature and affix the corporate seal to all instruments when required and also to all stock certificates. He should conduct all the correspondence of the association and when requested give to the members statements of their accounts.[10]

[10] In addition to these duties, in some associations he is required to keep a special record of all loans made by the association upon real estate security, and to see that members having such loans promptly produce their tax receipts; and if the association's loan is subject to a prior incumbrance, the receipt showing the payment of interest on such incumbrance, as required by the terms of the bond and mortgage. It is also sometimes made his duty to watch advertisements of all judicial sales, so as to warn the association in case any property is to be sold on which the association has a lien that may be discharged by such sale, in order that the association may take proper action to protect its interests. In other associations these duties are performed by the solicitor or conveyancer.

Duties of the Solicitor.

§ 37. It is the duty of the solicitor[11] to attend to all legal matters and conveyancing[12] of the association. He prepares all bonds, mortgages, agreements, and other writings of a legal nature, given or taken by the association. It is his duty to see that the association gets the security offered to or required by the board of directors and approved in the motion granting the loan and that all the conditions imposed are strictly complied with.[13] The value of the security is none of his concern, but if in the course of settlement facts come to his knowledge that the board of directors did not know when granting the loan, which might have caused the loan to be rejected had they been known to them, or if any misrepresentation or fraud in procuring the loan comes to his knowledge, it is his duty to refuse to complete settlement until further action can be taken by the board, or at least until he can lay the facts before the officers or committee so that they can take action if deemed necessary. He should so far as possible attend all meetings of the stockholders and the board of directors so as to advise them of their rights and liabilities in any contemplated action.[14] [15]

Duties of Conveyancer.

§ 38. The duties of the conveyancer are similar to the duties of the solicitor, except that he cannot represent the

[11] Some associations have no solicitor, but have a conveyancer, who, while he need not be a member of the bar, is familiar with conveyancing and the law pertaining to titles to real estate, and is generally as competent as an attorney-at-law, the only disadvantage being that if appearance at court becomes necessary an attorney is required in each case.

[12] All expenses incident to the making of a loan upon real estate security, including searches, title insurance, recording, fees of the solicitor, etc., are paid by the borrower.

[13] The secretary should certify on the application the security to be given, whether the association's loan is to be subject to any prior incumbrance and the conditions upon which the loan is granted.

[14] Unless competent legal advice is at hand, associations occasionally and unnecessarily become involved in prosecuting and defending actions at law which could have been avoided by proper advice in the first instance.

[15] Some associations require the solicitor to keep track of the payment of taxes, interest on prior incumbrances, etc., by the borrower, as required by the terms of the bond and mortgage. See note 10, Page 40.

association in any matter that requires an appearance in any court. Most associations that have a solicitor in addition to a conveyancer require all deeds and mortgages and other papers of a legal nature to be drawn by the solicitor or else to be approved by him. Some associations also require that the solicitor attend all real estate settlements.

Duties of Directors.

§ 39. The board of directors is the actual governing body in the control of the affairs of a building and loan association. The stockholders' meeting seldom does more than to elect the officers and adopt by-laws or amendments thereto: therefore, it is every director's duty to attend the meetings of the board and to be familiar with the business transacted and loans made by the association, so that he can act intelligently on all matters. He should have no interest adverse to the association, and if he is interested in any transaction it should be disclosed. He occupies a fiduciary relation to all the stockholders, and both good morals and good law imperatively demand that he should manage the business affairs of the association with a view to promote, not his own interests, but the common interests, and he should not directly or indirectly derive any personal profit or advantage by reason of his position distinct from his co-shareholders. By assuming the office, he undertakes to give his best judgment in the interests of the association, in all matters in which he acts for it, untrammelled by any hostile interest in himself or others.[16]

Duties of Members.

§ 40. By becoming a member the stockholder assumes various obligations and duties toward the association. He impliedly agrees that he will do nothing harmful to it and he is bound to do everything in his power to further its interests. It is his duty to disclose to the proper officer any information he may receive that would be useful to prevent loss to, or to protect the interests of the association. It is his duty to induce others to join the association

[16] Bird Coal and Iron Co. vs. Humes, 157 Pa. 278.

so as to assure a healthy growth. The impression is prevalent that a member discharges his full duty by making his regular payments. This is not so. He should always attend the stockholders' meetings and occasionally a directors' meeting if this is allowable under the by-laws. While it is true that success depends largely upon the watchfulness of the directors, it is also true, to a lesser degree, that it depends upon the watchfulness of the stockholders. When a financial institution fails the cry is raised, "Why did the directors neglect their duty?" but the stockholders should also ask themselves, "Why did we neglect our duty?"

Committees.

§ 41. An important duty in connection with building and loan associations is performed by the committee to appraise or value real estate.[17] The auditing committee is also very important.[18] If the duty of these committees is performed intelligently and honestly there is very little likelihood of serious loss; but if they are incapable or dishonest they could easily cripple or ruin an association. Fortunately there has been very little dishonesty among building association officials, and the standard of intelligence has been exceptionally high; that is more remarkable when we consider the fact that they are selected from all walks of life and sometimes have had no prior experience in the valuing of real estate or in the conduct of financial affairs.

Duty of the Appraisal Committee.

§ 42. It is the duty of the appraisal committee to view the property offered as security and report its valuation of it to the board and make a recommendation of the amount that in its opinion can safely be loaned upon it. The report of the committee is merely advisory; it is for the board to say whether the loan should be granted or

[17] These committees are usually paid a small fee for their services; the auditing committee by the association and the appraisal committee by the borrower.

[18] Building and loan associations are made subject to the supervision of the Commissioner of Banking by Sec. 1 of the Act of Feb. 11, 1895, P. L. 4, and are required to make reports to his department.

not; but still the responsibility is the committee's, as the board usually depends upon its judgment or recommendation in granting or rejecting the loan.[18a] It would be impossible to formulate any rules for the valuation of real estate. There are so many elements that enter into it, and the circumstances of each case are so different, that any attempt in that direction would be futile and useless. In making its recommendation, however, there are many factors to be considered outside of the actual value of the real estate, important among which are the character, earning capacity, and financial responsibility of the applicant and the purpose for which the real estate is being mortgaged. In other words the character of the borrower and the value of his bond are to be taken into consideration.

Duty of Auditing Committee.

§ 43. It is elementary to say that the duty of the auditing committee is to make an audit of the accounts and securities of the association. In order properly to do this it is necessary for the auditors to be familiar with the bookkeeping methods and the by-laws of the association, as well as the law of Pennsylvania governing building and loan associations. What a complete audit should include is a difficult question to answer. It would involve an amount of labor that could hardly be expected of the ordinary committee. It would involve, among other things, going over every individual entry made by the secretary or treasurer during the year, an examination of the minutes of all meetings, an examination of all the obligations or agreements given or taken by the association, and the comparison of every member's receipt book with the secretary's blotter. In making its report to the association, the committee should state exactly what it did do, so that if the association desires it can have a more thorough audit made or

[18a] In Commonwealth ex rel. vs. Anchor Building and Loan Association, 20 Superior 101, Judge Weiss, of the Common Pleas Court, whose opinion is there published in full, says, on Page 104, "Members of a governing body have a presumptive right to rely upon a report made by a committee of the body upon matters relating to values of securities for loans, and are protected, when, as in this case, the fault imputable to the members of the committee is an unfortunate result in the exercise of judgment."

an additional examination made along certain lines. An auditing committee properly to perform its labors should:

(a) Examine the minutes of every meeting in order to ascertain what loans or expenditures were authorized by the board of directors.

(b) Verify the receipts for each month.

(c) Total the receipts for the year and see if they have been properly charged to and receipted for by the treasurer, and by him deposited to the credit of the association.

(d) Verify all disbursements, see that no payments have been made except upon proper voucher as authorized by the by-laws, and that no unauthorized payments have been made.

(e) See that the treasurer's bank balance is the same amount as the total receipts over expenditures. Verify this by actual inquiry at the bank.

(f) Examine and verify all entries in the secretary's blotter or other book of original entry. Trace them to their sources and see that they have been posted properly in the ledger account.

(g) Verify the "profit and loss" statement as to income, expense and distribution.

(h) Verify the financial statement.

(i) Verify the loans or bills payable at bank or elsewhere.

(j) Verify as many stockholders' books as possible with the members' individual accounts. If one-tenth of the books outstanding, selected promiscuously, are examined, it would be a fair test.

(k) Examine the bonds of officers who have the handling of funds and see that they have not expired and that they are in proper form.

(l) Examine the stock certificate book. See that every certificate issued is properly accounted for and that all matured, cancelled or forfeited stock is so marked and replaced in the book or else deposited with the treasurer.

(m) Verify all stock loans and see that they are all entered in the loan account. See that the member's stock

has been assigned to the association as collateral security and that it is of sufficient value to warrant the loan. Examine the obligation or note and see that it is correct and in proper form.

(n) Examine carefully the bonds and mortgages given to secure real estate loans. See that the fire insurance policies have not expired and that the property is correctly described and that in case of loss the insurance is payable to the association. The title policies should be examined carefully and the exceptions contained therein noted and compared with the secretary's certificate of how the loan was passed, or compared with the minutes to ascertain if the exceptions were authorized. The member's stock certificate should be properly assigned to the association as collateral security to the loan.

Compensation of Officers.

§ 44. In many associations the only paid officers are the secretary, treasurer and solicitor,[19] although it is entirely proper to allow compensation to the other officers, including directors. The great danger of paying salaries to directors is the abuse that may follow. The association could not afford to pay them the real value of their services and therefore, when they do receive compensation, it is generally only nominal.[20] Where officers receive compensation for their services they are held to a higher degree of personal responsibility than those whose services are gratuitous, but insignificant payments to directors attending meetings of the board do not amount to compensation and do not change the measure of their duty and liability.[21]

The payment of salaries to officers is usually authorized by the by-laws, and the amount thereof is fixed by the board of directors at the time of their election. Unless done at that time the officer or director cannot recover for his services, for where no agreement preceded the services, no presumption of such an agreement arises from their

[19] In some associations even these are not paid.

[20] Usually one dollar for each regular meeting attended by the directors.

[21] Com. vs. Anchor B. & L. Assn., 20 Superior 101.

performance,[22] and the association would not be liable on a quantum meruit. There must be an express contract for compensation, before the performance of the services.[23] Therefore, an officer under a fixed salary cannot recover additional compensation, although the services performed by him were extra and not contemplated in his employment,[24] nor does a promise to pay for past services make any difference, as a promise to do so is against public policy and void.[25]

In building and loan associations the real reward for an officer or director is the knowledge that he is doing something to aid his fellow men. He is not working for the benefit of himself alone, but for the wage earner and home buyer. He is encouraging thrift and independence and making better citizens of the members of his community. He is encouraging and assisting the ordinary person to accomplish something that could not be achieved in any other way.

Compensation of Committees.

§ 45. Compensation usually is, and should be allowed to the auditing committee. Its duties are exacting, and if properly performed require considerable time. Men naturally feel an additional degree of responsibility when they are being paid for their services. The appraisal committee or the committee to value real estate is paid by the applicant for a loan, and the fee is earned whether the security for the loan is approved or not, therefore, the charge should be demanded and paid in advance.

Compensation For Special Meetings.

§ 46. When special meetings are called at the request of a member in order to transact some business of especial benefit to him, he should be required to pay a fee which

[22] Martindale vs. Wilson-Cass Co., 134 Pa. 348; Grafner vs. Street Railway Co., 207 Pa. 217.

[23] Kilpatrick vs. Bridge Co., 49 Pa. 118; Brophy vs. American Brewing Co., 211 Pa. 596; Bair & Gazzan vs. Vandersaal, 36 Superior Court 615; Althouse vs. Cobaugh Colliery Co., 227 Pa. 580.

[24] Carr vs. Coal Co., 25 Pa. 337.

[25] Accommodation L. & S. F. Ass'n vs. Stonemetz, 29 Pa. 534.

should be divided among the directors attending in order to compensate them for their time. This answers another good purpose, however, as it discourages the calling of special meetings, which should be avoided whenever possible, taking into consideration the annoyance and trouble to the directors and the rights of the member.

Amount of Officers' Compensation.

§ 47. What is a proper compensation for a building and loan association official depends upon the size of the association and the amount and kind of labor required. The duties of the same officer differs in different associations, and some men are more competent and do their work more thoroughly and with more exactness than others. It would, therefore, be impossible and unwise to fix any certain amount or scale[26] of compensation. It is a matter that is, and should be, left to the judgment and discretion of the board of directors. Often officers serve without compensation, deriving enough pleasure from the work to reward them for their labors, but the offices of secretary and treasurer are often held by men who depend upon these positions for their livelihood and of course are entitled to receive just and fair compensation for their work. Experience has shown that it is best to have competent, well-paid men in these positions in order to put the association in a position to demand prompt, proper and efficient attention to their duties. The solicitor or conveyancer should at best receive only a nominal salary, as they are usually amply compensated by fees paid by borrowers upon real estate security.

[26] Some associations pay their secretary and treasurer a certain amount per share.

CHAPTER VI

MEETINGS AND ELECTIONS.

Stockholders Meetings.

§ 48. The stockholders of the association assembled at a regular meeting, or at a special meeting properly called, are the supreme governing power of the association, but this power is seldom exercised beyond the ratification or rejection of by-laws, the election of officers and directors, or the approval or disapproval of any act which according to the laws of this state or the by-laws of the association requires action by the members, such as an approval or disapproval of an increase of the capital stock or a change in the by-laws or charter of the association. The time and place of holding the annual meeting should be fixed by by-law. Of course there is no legal objection to holding a regular stockholders meeting twice a year or even oftener but there is no practical necessity for it. What constitutes a quorum of a stockholders meeting is usually provided for by the by-laws, but in the absence of such a provision a majority would constitute a quorum.[1] A stockholder present at a meeting and not voting may be counted for the purpose of making a quorum.[2]

Meeting of the Board of Directors.

§ 49. The board of directors acting as such has the actual control, management and direction of the affairs of the association. They must act as a board and not individually in order to bind the association. In the course of business, however, it often becomes necessary for an officer to take some action or to exercise some authority or an

[1] Act of April 29, 1874, P. L. 77, Sec. 6; Purdon's Digest (13th Edition), Vol. 1, Page 797. At a meeting duly convened, a quorum being present, a majority of those present have power to transact business, Granges vs. Grubb, 7 Phila. 350.

[2] Com. vs. Wickersham, 66 Pa. 134.

unauthorized power in the furtherance of the business of the association, or to protect the association against loss, which cannot be delayed until the regular meeting and the calling of a special meeting is impossible or inconvenient. These usurpations of authority are absolutely essential to the well being and prompt dispatch of business of any modern corporation and, therefore, may be said to be sanctioned by custom. However, it is just such acts as these that sometimes cause trouble for the association, the officer that assumes the responsibility, or the member or person interested in the transaction. Any person dealing with the official under these circumstances does so at his peril, for if the action is not subsequently ratified it is a doubtful question whether the association is bound. It will, therefore, be seen that the directors cannot bind the association by acts done outside of a regular or special meeting,[3] and that a quorum must be present,[4] and at least a majority of all the directors is necessary to constitute a quorum.[5]

Notice of Meetings.

§ 50. When the by-laws fix the time and place of holding regular meetings of the stockholders or of the board of directors, no notice thereof need be given; or if the time is fixed and the meeting is to be held at the usual meeting place none need be given; but if a meeting is held at another than the usual time or place notice must be given. The by-laws should direct the board to hold regular meetings at such time and place as they may fix by special or standing order. Then when this order is made no notice of a directors meeting need be given. Of course it is usual, despite the by-laws, to give notice of all meetings, the only purpose in doing away with the necessity of notice being to prevent the necessity of *actual* notice, for it has been held that when the time of meeting has not been fixed by charter, by-laws or other competent authority, actual notice

[3] Stoystown, etc., vs. Turnpike Co., 45 Pa. 386; Workingman's L. & B. Assn. vs. Heaton, 233 Pa. 173.

[4] Fisher vs. Harrisburg Gas Co., 1 Pearson 118.

[5] Curry vs. Cemetery Assn., 5 Superior 289; Act of May 14, 1891, P. L. 61.

of every meeting is indispensable to make it legal for the transaction of even ordinary business.[6] The by-laws should prescribe the method of giving notice of special meetings.[7] In the absence of a by-law or custom to the contrary at least one full day's notice of a special meeting of the board of directors must be given,[8] and where a definite and important transaction is contemplated at a special meeting the notice must contain sufficient facts to inform the directors of the contemplated action.[9]

Minutes of Meetings.

§ 51. One of the important duties of the secretary is to keep and record accurate minutes of the proceedings of all the meetings of the stockholders and of the board of directors. This is necessary, not only for the information of the officers and members, but in case of litigation the minutes are prima facie evidence [10] of the action taken and may be offered in evidence in the same manner as the acts of any natural person as proof of admissions against interest; but parol evidence is admissible to supplement or explain them.[11] The minutes should be noted by the secretary as they occur and later recorded in the minute book and signed by him. At the following meeting they should be read and if any mistakes have been made or anything has been omitted it should then be corrected and if that is not done it stands as the act of the association confirmed by itself, and if offered by the plaintiff in a suit against the association would no doubt be held conclusive.[12]

[6] Kersey Oil Co. vs. Railroad Co., 12 Phila. 374; 5 W. N. C. 144.

[7] The by-laws usually provide that notice of special meetings shall be given by the secretary mailing a notice thereof to the last-known post-office address of the stockholders. This is then sufficient. When the by-laws provide for publication in newspapers it is essential that it be done. Notice must be given in exact conformity with the by-laws.

[8] Mercantile Library, etc., vs. Pittsburg Library Assn., 173 Pa. 30.

[9] Id.

[10] Rose vs. Independent Chevra Kadisho, 215 Pa. 69.

[11] Hamill vs. Supreme Council of Royal Arcanum, 152 Pa. 537.

[12] McGowan vs. Lincoln Park, etc., Co., 181 Pa. 55.

Nomination and Election of Officers.

§ 52. The by-laws should provide for the method, time and place for the nomination and election of officers and when it is so provided the nomination and election must be conducted strictly in accord therewith, provided the by-law is a reasonable one and does not unjustly restrict the right to nominate or to vote,[13] or is not in conflict with the laws of the United States, or of this state, or of the charter of the association. In some associations the stockholders nominate and elect the board of directors and they in turn nominate and elect the other officers from among themselves.[14] In others the stockholders nominate and elect all officers and directors who together constitute the board of directors. Sometimes all the officers and directors, except the secretary, are elected by the stockholders, the secretary then being elected by the board of directors.[15]

Right to Vote.

§ 53. The right of voting stock at corporate elections is an incident of ownership, to be exercised, of course, in the mode and under the restrictions prescribed by the charter and by-laws.[16] A corporation or an alien[17] holding shares has a right to vote, so also has a borrower although his stock has been assigned to the association as security for a loan, as the implied agreement between the parties is that he should retain that right. Stock held in the name of a trustee or guardian may be voted by the trustee or guardian. Stock held jointly by two or more persons, either in their own right or as executors or trustees, cannot be voted at all unless the holders agree on the vote.[18] Stock subscribed

[13] Com. vs. Knorr, 40 C. C. 325.

[14] When the secretary is elected by the board of directors he need not be a member of the board unless the by-laws should expressly so provide.

[15] The solicitor or conveyancer is elected by the board of directors. He is not, properly speaking, an officer, his position being more in the nature of an employe or agent.

[16] Com. vs. Dalzell et al., 152 Pa. 217; Gallagher vs. McAdams, 49 Superior 81.

[17] Com. vs. Woelper, 3 S. & R. 29.

[18] Tunis vs. Railroad Co., 149 Pa. 70.

for and purchased from the association for the express purpose of controlling an election may be voted as such a purpose is not unlawful,[19] and in such a case evidence of the financial inability of the purchaser of the stock to keep up the payments is immaterial.[20] A stockholder is entitled to one vote for each share of stock[21] and can cumulate[22] his votes on one or more directors.[23] Any person entitled to vote may vote by proxy[24] but the proxy must be dated not more than sixty days prior to the election.[25] The proxy is revocable at the will of the party who gave it.[26] No notice need be given in advance of an intention to cumulate votes or to vote by proxy[27] and the by-laws prohibiting either are void.[28]

Votes Necessary to Elect.

§ 54. A majority of all the votes cast is all that is necessary to elect, provided a quorum is present,[29] unless the by-laws provide otherwise.[30] In the event of failure to elect new officers the old ones hold over until their

[19] Gallagher vs. McAdams, 49 Superior 81.

[20] Id.

[27] Com. vs. Smith, 19 D. R. 638; 37 C. C. 625.

[22] By cumulative voting is meant the right to cast for each share of stock owned as many votes, for one or more candidates as there are directors to be elected. Thus the holder of one share of stock when fifteen directors are to be elected may vote one share of stock for each of fifteen candidates, or fifteen votes for one; or he may distribute his fifteen votes for each share among any number of candidates in any proportion he may desire. In case of a contest this enables the minority to procure representatives on the board of directors.

[23] Morgan vs. The Hartley Oil and Gas Co., 30 C. C. 22.

[24] Act of March 5, 1893, P. L. 14 Sec. 1; Purdon's Digest (13th Edition), Vol. 1, Page 800.

[25] Id., Com. vs. Smith, 19 D. R. 638; 37 C. C. 625; Morgan vs. The Hartley Oil and Gas Co., 30 C. C. 22.

[26] Vanderbilt vs. Bennett et. al., 6 C. C. 193.

[27] Com. vs. Smith, 19 D. R. 638; 37 C. C. 625.

[28] Id.

[29] That a quorum was present at such election may be shown by parol. Com. vs. Read, 2 Ash. 261.

[30] Where a majority of those present is required to elect, a director who is present but declines to vote must be counted. Com. vs. Wickersham, 66 Pa. 134.

successors are elected. An election is valid even if illegal votes have been cast, unless it is shown that the result would have been different had the illegal votes not been cast. Failure to elect the full number of directors does not invalidate the election of those who receive the required number of votes.[31]

Removal of an Officer.

§ 55. If the by-laws provide for the removal of an officer for non-attendance to his duties or for any other reason it is valid, providing the method prescribed by the by-laws is strictly followed. A ministerial officer selected by the board of directors or any employee appointed by the board of directors is removable at the mere pleasure of the directors, without the assignment of any cause, without the giving of any notice, and without any trial or investigation into the grounds of removal and this includes the secretary and treasurer.[32]

[31] Com. vs. Parrish, 3 Kulp 220; Wright vs. Com., 109 Pa. 560.

[32] Brindley vs. Walker, 221 Pa. 287.

CHAPTER VII.

AUTHORITY OF OFFICERS AND AGENTS TO BIND THE ASSOCIATION.

Right to Act by Agent.

§ 56. Building and loan associations as well as all other corporations are empowered by the general incorporation act of 1874 to act not only through their board of directors and officers but also "to appoint and remove such subordinate officers and agents as the business of the corporation requires, and to allow them a suitable compensation." They may, therefore, employ collectors and solicitors or any other agents or employees that may be necessary to carry on their business.[1] To what extent an officer or agent can bind an association by his acts, therefore, is a very important question. This is almost entirely a question of agency, for a corporation as well as an individual is bound by the acts of an authorized agent acting within his expressed or implied authority, provided the contract or agreement is one which the principal itself could have made.

Authority of Officers and Agents to Bind Association.

§ 57. The duties and authority of officers and agents of a building and loan association are usually prescribed by the by-laws and are seldom more than clerical in their nature, such as the receiving of money, recording of minutes and the execution of instruments expressly authorized by the board of directors. In a properly conducted association very little discretion is given to anybody, as all loans,

[1] Folk vs. State Capital Savings and Loan Assn., 214 Pa. 529.

acts, contracts or matters requiring an exercise of judgment must be expressly authorized by the board of directors as provided by the by-laws. In this respect an association differs materially from the ordinary corporation for profit. In other corporations the board of directors usually exercise no authority beyond the appointment of officers, fixing their compensation, and passing in a formal way upon matters which the law requires them to enact. In these corporations the by-laws confer upon the officers, managers or agents ample authority to transact the business of the corporation, but in a building and loan association the by-laws confer this authority only upon the board of directors acting as such. The by-laws of a corporation, upon their adoption, become written into the charter, and put parties upon notice, in dealing with officers of the corporation, as to the extent of the power and agency of such officer, and this, whether the specific by-law has been brought home to them or not.[2] This is particularly applicable where the party dealing with the corporation is a member, and has in his actual possession a copy of the by-laws.[3] Therefore, persons dealing with officers or agents of an association must take notice of its charter, and of the limitations imposed upon their authority by the by-laws, but an association is bound by the acts of its agent, within the scope of his authority or in the course of his employment.[4] The association is liable for acts done by its agent in the line of duty, upon the principle that, where one of two or more innocent persons must suffer a loss, he who set in motion the cause of the loss must suffer therefor. The association is liable for fraud committed by its agent within the apparent scope of his authority,[5] for where a

[2] Worthington vs. Schuylkill Electric Railway Co., 195 Pa. 211. This statement of law should be qualified by adding, "Where the corporation received the benefit of the unauthorized act of its officer, it is bound." Wayne Title and Trust Company vs. Railway Co., 191 Pa. 90; see also Wojciechowski vs. Johnkowski, 16 Superior 444. For a further exception to this rule see next section.

[3] Louchheim vs. Somerset B. & L. Assn. (No. 1), 25 Superior 325. This case was reversed by the Supreme Court, see 211 Pa. 499, but this statement of law was not affected.

[4] Susquehanna Mutual Fire Ins. Co. vs. Cusick, 109 Pa. 157.

[5] Independent B. & L. Assn. vs. Real Estate Title Co., 156 Pa. 181; Brooke et al. vs. Railroad Co., 108 Pa. 529.

wrong is committed by an agent it is more reasonable that he should sustain the loss who reposes confidence in the agent than he who has given no such confidence,[6] but if the loss is occasioned by the confidence reposed in the officer or agent by the member, then the member must bear the loss.[7]

When By-Law Does Not Bind.

§ 58. The principle stated in the last section that "The by-laws of a corporation, upon their adoption, become written into the charter, and put parties upon notice, in dealing with officers of the corporation, as to the extent of the power and agency of such officer, and this, whether the specific by-law has been brought home to them or not" should be particularly true of a building and loan association, for the reason that the by-laws of all associations are, to a great extent, similar in their provisions, and especially in Pennsylvania, where the public is familiar with the building and loan association idea and with the laws and by-laws governing them. The Supreme Court, however, saw fit to qualify this principle in the case of Louchheim vs. Somerset Building and Loan Association[8] overruling the Superior Court[9] and the Common Pleas Court, Justices Fell and Potter dissenting. This case affirms the following proposition: "Where a corporation designates an officer or a committee as its agent to receive moneys due it, and this is known to those who intend to pay, or if they have the means of knowledge, then a payment to another officer or committee is only payment to the corporation if it actually receives the money. Notwithstanding this, the corporation may by its conduct depart from its appointed method and set up a different one, which, under certain circumstances, will be binding upon it. * * * The authority of an officer of a corporation as its agent, although distinctly designated by the corporation, may be ascertained to be different, from circumstances covering a period of time long enough to manifest a course of dealing, provided such circumstances are known also to and

[6] Cunningham vs. Mutual B. & L. Assn., 6 D. R. 99.
[7] Mutual B. & L. Assn. vs. Johnson, 7 D. R. 729.
[8] 211 Pa. 499.
[9] 25 Superior 325.

acquiesced in by the board of directors, and if the course of dealing is one the board had power to authorize." It is respectfully submitted that this statement of law, although no doubt correct in principle, was not justly applicable to the facts of this case. The plaintiff had in his possession a copy of the by-laws and the defendant was bound to receive whatever payment was made from whatever source it came. The directors had no power to authorize the secretary to collect money as the by-laws of the association provided that payments should be made at a meeting of the association to a financial committee consisting of three directors. However, the opinion of President Judge Rice of the Superior Court is sufficient answer to the opinion of the Supreme Court. Nevertheless, the decision stands today as the law, but its application is not likely to be extended or even applied except in extraordinary cases.

When Act Not Binding.

§ 59. An association is not bound by the acts of its officers or agents unless the acts are authorized, or by acts performed in excess of the delegated authority, unless the transaction comes within the few exceptions to this general statement of law. A surety for a loan cannot defend on the ground that he had made a parol agreement with the agent of the association whereby he was to be released from liability in the event of a certain contingency, where it is not shown that he acted within the scope of the authority confided to him by the board of directors, or that it was made in the course of business which the board authorized him to transact.[10] The authority of an agent to sell real estate[11] or to make a lease for a term exceeding three years[12] is not binding unless it is in writing.

When Act is Binding Although Never Expressly Authorized or Ratified.

§ 60. Contracts made by corporate officers, without authority and which have not been formally confirmed and ratified, may, however, be effectual in equity and

[10] Gass vs. Citizens' Building and Loan Assn., 95 Pa. 101.
[11] Heincke vs. Krouse, 14 W. N. C. 106.
[12] Jennings vs. McComb, 112 Pa. 518.

have controlling force, if with full knowledge of all the circumstances[13] the benefits are accepted and retained.[14] When an agent exceeds his authority, his principal cannot avail himself of the benefits of his act and at the same time repudiate his authority.[15] Silent acquiescence for a long period of time on the part of the principal, with full knowledge of the facts and without sufficient excuse, may amount to a ratification of the unauthorized acts of the agent.[16] It is the duty of the principal to disavow the act within a reasonable time.[17] What is a reasonable time is a question of fact to be determined by a jury.[18] The subsequent conduct of the principal may be sufficient to raise a presumption of ratification of the acts of the agent,[19] such as attempting to enforce the contract made by the agent.[20]

When Authority is Presumed.

§ 61. Where the common seal of a corporation is affixed to an instrument, and the signatures of the proper officers are proved, it is presumed that they did not exceed their authority, and that the seal is the seal of the corporation and that it was affixed by proper authority.[21] If the contract could be valid under any circumstances, an innocent party in such a case has a right to presume the existence of authority, and the corporation is estopped from denying it.[22] It would, therefore, seem to follow that an association would be bound by any act or deed of its officers

[13] Zoebisch vs. Rauch, 133 Pa. 532; Pollock vs. Standard Steel Car Co., 230 Pa. 136; Sword vs. Reformed Congregation Keneseth Israel, 29 Superior 626.

[14] Bangor, etc., Ry Co. vs. Slate Co., 203 Pa. 6; Oil Creek, etc., R. R. Co. vs. Penna. Transportation Co., 83 Pa. 160; Presbyterian Board vs. Gilbee, 212 Pa. 310.

[15] Penn Natural Gas Co. vs. Cook, 123 Pa. 170.

[16] Graff et al. vs. Callahan, 158 Pa. 380.

[17] Hotchkiss vs. Roehm, 181 Pa. 65.

[18] Farmers and Mechanics Bank, etc., vs. Third Nat. Bank, 165 Pa. 500.

[19] Cake's Appeal, 110 Pa. 65.

[20] Id.

[21] Penn Nat. Gas Co. vs. Cook, 123 Pa. 170.

[22] Turnpike Co. vs. Pass. Ry. Co., 194 Pa. 144.

that had the corporate seal attached duly attested by them, provided, however, that the party was not aware of any defect of authority or any other irregularity, and there was nothing to excite suspicion, whether the act was properly authorized or not. Thus it would seem that a deed, a release of mortgage, a release from the lien of a judgment would be valid and binding upon the association if executed, sealed and delivered under these circumstances, whether the officers were authorized or not.

When the Payment of Money is Binding Upon the Association.

§62. When a check is made payable to an association and given to its treasurer, who indorses it, and who is the proper person to make such indorsement, the check is actual and legitimate payment to the association, although its proceeds are embezzled by the treasurer.[23] If the solicitor receives a check for a debt due the association, and it is not presented at bank for payment within a reasonable time, and the bank becomes insolvent, and, therefore, the check worthless, as between the debtor and the association, the latter must bear the loss.[24] The receipt of dues and interest by the solicitor, which are accepted and receipted for by the proper officers, does not make the solicitor the agent of the association to receive the principal,[25] and if he receives the principal without authority from the association to do so, and without custody of the papers, he receives the money as the agent of the debtor and if he embezzles the fund it is the debtor's loss.[26] When the by-laws provide that the payment of money, to be binding upon the association, must be made at the regular meeting to a certain person or persons, then payment at any other place or to any other person will not bind the association, unless it actually receives the money,[27] but if

[23] Strong vs. Ten Cent Tutor B. & L. Assn., 189 Pa. 406.

[24] Kilpatrick vs. Home B. & L. Assn., 119 Pa. 30.

[25] Thirty-fifth Ward B. & L. Assn. vs. Steinmetz, 22 Montg. 110; 20 York Legal Record 43.

[26] Id.

[27] For exception to this statement see Section 58.

the by-laws do not provide that payment must be made at the meeting then payment to the officer authorized to receive payments at any other time or place is binding,[28] or if it is the custom to receive dues at other places and through other persons than provided for in the by-laws, the custom may supersede the by-law and bind the association.[29]

Agency of Defaulter the Test.

§ 63. The question of who shall be the loser by a defalcation narrows itself down to a question of agency. Was the defaulter the agent of the payor or of the association? In the first instance it is the duty of the association to use due diligence, to employ none but honest officials and agents and to bond those who receive money so as to guard against loss. The public and members are bound to deal with the officers and agents selected by the association, and when it becomes a question whether a loss occasioned by a dishonest solicitor should be borne by the borrower who, by custom of the association, is compelled to treat with the solicitor, the association rather than the borrower should stand the loss.[30] But where the loss was made possible by the confidence reposed by the borrower in the solicitor as an individual and not because of his official position, and where the loss is made possible by the negligence or laches of the borrower, which put it in the power of the wrongdoer to commit the wrong, the loss must be borne by the borrower.[31] It is a case for the jury to determine in which capacity the agent acted.[32]

Statements Made by Secretary as to Amount Due.

§ 64. The statement of the secretary as to the amount due upon a mortgage held by an association, is not binding upon an association, in the absence of authority in

[28] Louchheim vs. Richmond Mutual B. & L. Assn. (No. 1), 16 Superior 33; Schutte vs. California B. & L. Assn., 146 Pa. 324.

[29] Louchheim vs. Somerset B. & L. Assn., 211 Pa. 499; see Section 58.

[30] Cunningham vs. Mutual B. & L. Assn. of Altoona, 6 D. R. 99.

[31] Mutual B. & L. Assn. vs. Johnson, 7 D. R. 729.

[32] Glenolden B. & L. Assn. vs. Richards, 16 York Legal Record 48; 8 Del. 455.

the secretary to settle such claims or furnish statements to parties of the amount owing thereon.[33] No such authority is implied from the office of secretary.[34] The authority of the secretary, however, to act for the association in such matters may be established by competent evidence, and if there is such evidence it is a question for the jury.[35] In order to bind the association it is not necessary that a formal resolution of the board of directors be passed and duly recorded upon the minutes.[36] The authority of an agent to act for and bind his principal can be implied from the accustomed performance by the agent of acts of the same general character for the principal with its knowledge and consent.[37] It is sufficient if the secretary is held out to represent the association in such transactions,[38] but it is not sufficient to show that as secretary he had charge of the books of the association.[39] An agreement to accept anything but money in satisfaction of a judgment, is not within the implied power of the secretary.[40]

[33] Johnston vs. Elizabeth B. & L. Assn., 104 Pa. 394; Erthal vs. Glueck, 10 Superior 402; Haspel vs. Lyons, 38 Superior 334.

[34] Id.

[35] Helping Hand B. & L. Assn. vs. Buss et al., 13 Superior 343.

[36] Estate of Vianna Lassen Badders, 5 Superior 465; Helping Hand B. & L. Assn. vs. Buss et al., 13 Superior 343.

[37] Helping Hand B. & L. Assn. vs. Buss et al., 13 Superior 343.

[38] Brooke vs. Railroad Co., 108 Pa. 529.

[39] Johnston vs. Elizabeth B. & L. Assn., 104 Pa. 394; Haspel vs. Lyons, 38 Superior 334.

[40] Good Hope Building Assn. vs. Amweg (No. 2), 22 Superior 145.

CHAPTER VIII.

LIABILITY OF OFFICERS AND MEMBERS.

Moral Liability of Officers.

§ 65. Officers of all financial institutions have a great moral liability to those interested in the institution's welfare as distinguished from their civil or criminal liability, and this is true to its greatest extent when the institution is a building and loan association. The stockholders consist largely of people whose investment represents their entire savings and which are accumulated as a result of the greatest self denial. It is their only provision for the future and only resource they have in case of misfortune. In becoming a member or subscribing for stock investors are influenced mainly by their confidence in the integrity and ability of the officers. They do not know much concerning the association's condition, but they do know the officer or officers and on them they rely rather than upon any statement that is placed before them and which they may not understand. It is, therefore, incumbent upon anyone accepting such a position to do his full duty, to attend the meetings regularly and to be informed upon all investments. No desire to favor a friend or fellow officer should influence his judgment as his obligation to the stockholders is higher than his obligation to them. No fear of personal disfavor should keep him quiet when duty prompts him to speak and act. The fact that the officer serves without any or only nominal compensation makes his moral obligation the higher, and if he cannot or will not do his full duty or if it involves too great a personal sacrifice on his part he should resign and not allow his good name to be used as a trap for the unwary.

Officers and Stockholders Not Generally Liable.

§ 66. One of the main objects sought to be attained by corporate organization is exemption from personal liability on the part of those who participate in the management and profits of the enterprise. This is one of the chief characteristics distinguishing corporations from partnerships and joint stock companies. Ordinarily when corporate existence is perfected all personal liability ceases. This, like all other general statements of legal principles, is subject to various exceptions. The law is not so technical or so weak as to allow the mere act of incorporation to be used as a cloak for fraud or gross negligence. Of course officers and stockholders cannot recover the amount paid in an insolvent corporation and leave the general creditors unpaid. When we speak of personal liability we mean a liability beyond the stock payments. To escape liability beyond this all that is required of the directors of a building and loan association is strict integrity, attendance at stated periods for the purpose of investing and loaning the money of the association, reasonable skill, time, diligence and care in the management of the financial affairs of the association, according to the usages of the business.[1]

Civil Liability of Officers and Directors.

§ 67. Directors of a building and loan association are gratuitous mandatories, and as such are held to but ordinary skill and diligence in its management, and are personally liable only when they are guilty of fraudulent conduct, or such gross negligence that it amounts to fraud.[2] Officers or directors are not liable for losses sustained on account of honest mistakes of judgment, and are not liable, when acting in good faith, for loss sustained on account of depreciation of real estate purchased under foreclosure proceedings, even though they borrowed money in excess of the amount authorized by law.[3] An officer who receives

[1] Com., etc., vs. Anchor B. & L. Assn., 10 D. R. 167.

[2] Hibernia Bldg. Assn. vs. McGrath, 154 Pa. 296; Com. vs. Anchor B. & L. Assn., 20 Superior 101.

[3] Eaton et al. vs. Eastern B. & L. Assn. et al., 7 D. R. 440.

substantial compensation for his services is held to a higher degree of care than those serving without compensation, but insignificant payments to directors for attending meetings of the board do not amount to compensation, and do not change the measure of their liability.[4] A treasurer of an association who serves without pay is a gratuitous bailee and as such is liable for gross negligence only, and his duty as bailee is not changed by the fact that he gives bond that he will faithfully discharge the duties of his office, keep just and true accounts of the money received, and pay them over to his successor.[5] Where the by-laws provide that the president shall sign and the secretary attest all orders drawn upon the treasurer for appropriations made by the board of directors, and the treasurer shall pay all orders drawn on him by order of the board, if signed by the president and attested by the secretary; in such a case it is not want of ordinary diligence on the part of the treasurer to pay orders so signed and attested by the president and secretary, although the money had not been appropriated by the board of directors.[6] If the directors declare stock matured when the condition of the association does not justify it they are not liable in the absence of fraud or such gross negligence as would amount to fraud and they have a right to rely upon their officers' and auditors' reports.[7] An officer or director would be liable to the association for any secret profits made as a consequence of his official position, or secret profits made by his approval or authority and this

[4] Com. ex. rel. vs. Anchor B. & L. Assn., 20 Superior 101, See Page 109.

[5] Hibernia Bldg. Assn. vs. McGrath, 154 Pa. 296.

[6] Id. In this case the treasurer served without compensation, but the same conclusion would no doubt have been reached if he had received compensation.

[7] Commonwealth vs. Anchor B. & L. Assn., 20 Superior 101.

is true even if the contract or agreement was also profitable to the association.[8]

Criminal Liability.

§ 68. Of course all officers, directors, solicitors, conveyancers or any other person having to do with building and loan associations are subject to criminal prosecution for any act which the law defines as a crime or misdemeanor. It would be useless to cite or discuss any of these offences in this book as that would involve a general discussion of criminal law. Especial attention, however, is called to the act of May 8, 1907, P. L. 180, as follows:

"Sec. 1. Be it enacted, etc., That every director, officer, agent, bookkeeper, or clerk of any bank, trust company or building and loan association, who wilfully and knowingly subscribes or makes any false statement of facts, or false entries, in the books of such bank, trust company, or building and loan association; or knowingly subscribes or exhibits any false papers, with intent to deceive any person authorized to examine as to the condition of such bank, trust company, or building and loan association; or wilfully or knowingly subscribes to or makes any false report, shall be guilty of a misdemeanor; and, upon conviction, shall be sentenced to pay a fine not exceeding one thousand dollars, or undergo an imprisonment not exceeding two years, or both, at the discretion of the Court."

[8] Bird Coal and Iron Co. vs. Humes, 157 Pa. 278. In this case was said: "A director is a trustee for the entire body of stockholders, and both good morals and good law imperatively demand he shall manage all the business affairs of the company with a view to promote, not his own interests, but the common interests, and he cannot directly or indirectly derive any personal profit or advantage by reason of his position, distinct from his co-stockholders. * * * And by assuming the office, he undertakes to give his best judgment in the interests of the corporation in all matters in which he acts for it, untrammeled by any hostile interest in himself or others. There is an inherent obligation on his part that he will in no manner use his position to advance his own interest as an individual as distinguished from that of the corporation. * * * And all secret profits derived by him in any dealings in regard to the corporate enterprise must be accounted for to the corporation, even though the transaction in which they were made also advantaged the corporation of which he was a director." See also Commonwealth Title Ins. & Trust Co. vs. Seltzer, 227 Pa. 410, and also Douglass-Whisler Brick Co. vs. Simpson, 233 Pa. 515.

Liability of Members.

§ 69. By becoming a member every stockholder agrees that he is to be bound by the by-laws then in existence or any future ones that may properly be enacted. This is his contract with the association and he is, therefore, bound to perform all the obligations imposed by the by-laws or suffer the penalty for his default. He is, therefore, liable for fines and forfeitures when they are imposed according to the by-laws and in conformity with the statute. The success of the whole scheme depends upon each member making his payments when they are due and the imposition of fines and forfeitures are justified only on the plea that without them it would be impossible to enforce payment with any degree of regularity. Every stockholder is liable to the full extent of his stock subscription for the losses and expenses of the association and he cannot by withdrawing escape that liability.[9] Every member from the moment he joins becomes a debtor to the association, and remains a debtor until his stock has matured or his membership is terminated in a legal manner. A subscriber for stock, using the word subscriber in contradistinction to a transferee, is always liable in case of loss to the full extent of his stock subscription, and a transferee is liable to the time that he disposes of his stock, and no holder of stock, whether original or holding by transfer, can rid himself of responsibility to creditors after the corporation has become insolvent,[10] but if the corporation has become insolvent he is not liable for losses sustained after he has given notice of withdrawal.[11]

[9] McGrath vs. Hamilton Savings and Loan Assn., 44 Pa. 383.

[10] Aultman's Appeal, 98 Pa. 565.

[11] United States B. & L. Assn. vs. Silverman, 85 Pa. 394. This proposition seems doubtful if the loss was occasioned by a transaction entered into, or loan made, before notice of withdrawal, even though the actual loss accrued after notice.

CHAPTER IX.

LOANS.

Nature of the Loan.

§ 70. A loan of money from a building and loan association differs in many particulars from a loan from any other kind of a corporation or an individual. A building and loan association can properly loan money to its members only, and if it does loan money to others not more than the principal and legal interest can be recovered.[1] The borrower is also a lender and participates in the profits made by loaning money to himself and others. The association is permitted to charge a premium in addition to the legal rate of interest. It can penalize its members by fines not exceeding two per cent. per month for failure to pay promptly amounts due. The transaction is often called an advance for the reason that it is merely an advance of money that will be due when the member's stock matures. The chief difference between the building association loan and the ordinary loan is not in the making of the loan, but in its repayment. In the contemplation of the parties the loan is not intended to be repaid by direct payments, but the value of the stock must eventually, if the enterprise is successful cancel the obligation. Whether it is called a loan or an advance is immaterial as long as the fact is kept in mind that there is something more between the parties than the mere relationship of borrower and lender. It is the failure to recognize this fact that leads to so

[1] Wolbach vs. Lehigh Building Assn., 84 Pa. 211.

much misunderstanding of the work of this peculiar class of corporations.[1a]

Power to Make Loans.

§ 71. The primary purpose for which associations are organized and their principal function is to make loans or advancements to their members upon being given satisfactory security. The power to make loans is expressly conferred upon them by the act of 1874, sec. 37, Clause 1.[2] The same section gives them the power and right to secure the repayment of such moneys, and the performance of other conditions upon which loans are made, by bond and mortgage or other security. The latter power is an incident of the former, just as the power to borrow money carries with it the incidental power to execute a note as evidence of the debt. But the power to loan does not carry with it the power to buy and sell notes.[3]

Who May Make a Loan.

§ 72. Any member[4] who is not under a legal disability such as would prevent him from making an ordinary contract is entitled to make a loan from a building and loan association. The act of April 10, 1879 P. L. 16, Section 7,[5] empowered a married woman to make a loan,

[1a] The act of May 14, 1913, authorizes members to secure not more than one-half of the amount loaned on real estate security by straight bond and mortgage for a fixed period of time and upon such terms and conditions as may be agreed upon. When such mortgages are taken, neither the borrower nor the association are entitled to the privileges and benefits of the regular building association loan, but as to so much of the loan as is upon straight bond and mortgage their relationship is the same as any other mortgagee and mortgagor, and no premiums or fines may be charged. See section 181.

[2] See Appendix Section 143.

[3] Manufacturers and Merchants' Savings and Loan Co. vs. Conover, 5 Phila. 18; 19 Leg. Int. 116.

[4] This includes a corporation that owns stock.

[5] See Appendix Section 158; Purdon's Digest (13th Edition), Vol. 1, Page 552.

bid a premium therefor[6] and secure the same by assigning her stock or other securities, or by executing a bond and mortgage secured upon her real estate, provided her husband joins in the execution of such bond and mortgage.[6a] Formerly no stockholder could procure a loan for a greater amount than the par or ultimate value of his stock[7] but this is now changed as to loans secured upon real estate by the act of May 14, 1913. The association cannot make a loan to a non-member,[8] but applications and bids for loans may be received from non-members willing to become members if loans are granted to them.[9] The association cannot invest its funds by purchasing real estate or securities of any kind except to protect its interest.[10] It may purchase real estate or other property as a result of a foreclosure or procedure to recover amounts loaned to members in default.[11]

[6] Prior to this act it had been held that premiums bid by a married woman could not be recovered, she being liable only for the amount actually received with legal interest; Wolbach vs. Lehigh Bldg. Assn., 84 Pa. 211; but if she continued payments after the passage of the act she could not set up her disability as a defense; Dilzer vs. Beethoven Bldg. Assn., 103 Pa. 86; if her husband had joined in the execution of the bond, he was liable for the entire amount due, including premiums, even before the act, Wiggins' Appeal, 100 Pa. 155; Tanner's Appeal, 95 Pa. 118.

[6a] Where a husband joins in the execution of a bond and mortgage of his wife's real estate, as required by the act, his liability on the bond is not lessened, because the act requires him to join in the execution. If he desires to restrict his liability, he should do so by agreement at the time of signing the bond; Punxsutawney Mutual B. & L. Assn. vs. Gallo, 9 D. R. 761.

[7] Act of April 29, 1874, P. L. 73, Sec. 37, Clause 4; Purdon's Digest (13th Edition), Vol. 1, Page 550; see Appendix Section 146.

[8] A non-member can become security for a member, and is then liable to the same extent as his principal; Relief Sav. Fund Assn. vs. Longshore, 8 Luz. L. R. 199. The disability of a member to make a loan, such as infancy, cannot be set up as a defense by his surety, even though the surety himself is not a member. See Wiggins' Appeal, 100 Pa. 155.

[9] Act of June 4, 1901, P. L. 403; see Appendix Section 166; Purdon's Digest (13th Edition), Vol. 1, Page 550.

[10] Building and Loan Assn. of Kennett Square, 28 C. C. 110; 12 D. R. 630; Domestic Building Associations, 30 C. C. 616, 14 D. R. 80; Building Association Investments, 34 C. C. 321.

[11] Act of April 29, 1874, Sec. 37, Clause 8; See Appendix Section 149. Purdon's Digest (13th Edition), Vol. 1, Page 550; Building Association Investments, 34 C. C. 321.

Purpose of Loan.

§ 73. Loans are made for the purpose of purchasing a homestead or other real estate, or for any lawful purpose or business, but there is nothing in the letter or spirit of the act that makes it the duty of the association to inquire for what purpose the loan is obtained, or to require any stipulation from the borrower as to what use he will make of the money, or in any manner to supervise or control its disbursement.[12] This doctrine follows as a necessary consequence, from the duty of the association to give its money to the highest bidder. It would be impracticable to do this if the associations were compelled to see to the application of the money or control its use.

Security for the Loan.

§ 74. Any security satisfactory to the board of directors can be pledged to secure the loan. It may consist of a first or second mortgage on real estae, the stock of the association or any other kind of personal property, provided the board of directors is not restricted by the by-laws or the charter of the association as to the security they may loan upon. It would, however, be no defence to an action upon securities taken in violation of the charter or by-laws to set up that fact, as the defendant would be estopped from alleging it. The association may take more than one security, it may at its option proceed against one or all of them if there is a default;[13] and a custom of taking only real estate security is no defence for other sureties when sued.[14] A married woman may mortgage her real estate to secure her own debt or that of her husband,[15] or of her son,[16] or a stranger,[17] provided that the husband join in the execution of the mortgage.[18] The report and

[12] Juniata Building & Loan Assn. vs. Mixell, 84 Pa. 313; Johnston vs. The Elizabeth B. & L. Assn., 104 Pa. 394.

[13] Juniata B. & L. Assn. vs. Hetzel, 103 Pa. 507.

[14] Id.

[15] Citizens' Sav. & L. Assn. vs. Heiser, 150 Pa. 514.

[16] Lewars vs. Weaver, 121 Pa. 268.

[17] Cridge vs. Hare, 98 Pa. 561; Hagenbuch vs. Phillips, 112 Pa. 284.

[18] Juniata B. & L. Assn. vs. Mixwell, 84 Pa. 313.

recommendation of a committee appointed to examine the security offered is not final, and the board may adopt, reject or ignore its recommendation, but the board has the right to rely upon the report of its committee relating to the value of securities.[19] Stock already assigned as security for a loan may be reassigned as security for a second loan, provided the board of directors assent thereto[20] and the matured value of the stock is sufficient to repay the entire indebtedness.

What is Sufficient Security.

§ 75. What is proper security for a loan is a question that cannot be answered satisfactorily. Each application presents a different set of circumstances and is entitled to consideration upon its own merits. Experience has shown that it is unsatisfactory and unwise to limit the board of directors by any restrictions in the charter or by-laws as to the nature of the security they may loan upon. The usual security, however, is a bond and mortgage secured upon real estate, together with an assignment of the borrower's stock, or upon the note of the borrower and an assignment of the stock, when the stock itself is of greater value than the amount of the loan. Some associations loan only upon first mortgage security, while there are many very successful associations whose assets consist to a large extent of second mortgages. It is an advantage to the borrower to place a first mortgage outside of the association and then have the association take a second lien. It makes his monthly payments much less as he is not required to maintain as large a number of shares[21] as would be necessary if he borrowed all the money from the association, and he is less likely, therefore, to fall in arrears or default in his payments, but it also casts the additional burden upon the

[19] See opinion of Judge Weiss in the case of Com. vs. Anchor B. & L. Assn., 20 Superior 101.

[20] York Trust Co. vs. Gallatin, 186 Pa. 150. See Page 157.

[21] This is changed to some extent by the act of May 14, 1913, which permits members to secure an amount not exceeding one-half of the amount loaned on real estate security by straight bond and mortgage without shares of stock and the other half by the usual building and loan association mortgage. See Appendix Section 181.

officer to see that the first mortgage interest is promptly met. Associations which loan on first mortgages only are seldom paid any bonus, while a second mortgage application is usually accompanied by a bid for a substantial premium. The amount of equity required in a real estate loan varies. It is seldom less than ten per cent. of the value placed upon the property by the directors. What are known as "stock loans" are frequently made up to within ninety-five per cent. of the withdrawal value of the stock. The purpose of the loan, the character, habits and financial standing of the applicant are factors often properly taken into consideration in the granting or refusing of a loan.

Applications for Loans.

§ 76. Applications for loans upon real estate security are usually forwarded to one of the officers of the association, generally the secretary, upon blanks provided for that purpose, stating the amount of the loan desired, the premium bid, if any, the location of the property on which the loan is to be secured, the size of the lot, the improvement or buildings thereon and how occupied, the assessment, the rental value, the stated value, the incumbrance to remain, if any, the equity above the loan desired, and such other information as would aid the board of directors in the consideration of the application. The appraisal committee makes its report, stating its valuation of the property and whether in its opinion it can safely be granted. The secretary certifies to the solicitor or conveyancer the action taken by the board of directors and the solicitor or conveyancer in turn certifies that the bond and mortgage have been executed to the association in accordance with the resolution of the board. It is also advisable for the secretary to note on the application the page in the minute book containing the resolution of the board granting the loan, the number of the member's stock certificate and the number of the order on the treasurer for payment. By this method the application contains a history of the whole transaction and is valuable for reference. An approved form of application is printed in the appendix.

Term of Loan.

§ 77. At the time the loan is made it is contemplated by the parties that it is to continue until the loan is repaid by the maturity of the stock or earlier at the option of the borrower.[21a] However, there is stated in the bond, mortgage or note, a definite time when the obligation is to become due and payable without regard to the maturity of the stock. This term is usually for "any time within one year" and the question has often been asked but never satisfactorily decided whether the association can enforce repayment at the expiration of the year. The question arose in the Common Pleas Court of Philadelphia County. In that case a scire facias sur mortgage was issued alleging non-payment of the principal sum at the expiration of one year. An affidavit of defence was filed claiming that the mortgage was not due and a rule for judgment for want of a sufficient affidavit of defence was discharged by the court.[22] The calling of a loan before maturity of the stock, without default of any kind, seems to violate the spirit and letter of the act as well as being repugnant to the other conditions of the contract between the parties. Despite the fact that the term is definitely fixed by the obligation given, there is an inherent lack of power in the association to require any one of its members to repay his loan except by the maturity of his stock for otherwise it would not be a building association loan. The legislature has fixed the status of the parties, if not in positive terms, then at least by implication, and it is beyond the power of the parties to bind themselves in a different manner. Whatever the condition of the obligation, it is, nevertheless, clear that the discharge of a debt is designed to be according to the system peculiar to building associations. It is not strictly a loan; it is an advance of the matured value of the stock and, therefore, can fall due only upon maturity of the stock. The act of April 10, 1879, P. L. 16, Sec. 4,[23] provides "A borrower may repay his loan at any time," etc. and then further provides for the return of part of the premium in case the borrower

[21a] What is said in this section does not apply to a straight bond and mortgage.

elects to pay before maturity. In construing the different sections of this act the courts have in doubtful cases generally resolved such doubt in favor of the borrower, and this is one of those cases where that should be done. In this connection it may be well to quote from the opinion of Justice Fell in a recent case [24] "In carrying out the plan on which building associations are organized and conducted, it is not intended that a stockholder who borrows of the association will discharge the debt he incurs by direct payments on account of it. He pays at stated periods the dues on his stock, the interest on the money borrowed, and, when the premium bid for the loan has not been deducted, the instalments on it. When by the receipt of dues, interest, premiums and fines for non-payment of dues, all the stock of the association or of the series to which the borrower's stock belongs, becomes full paid or matured, the value of his stock equals the amount of his debt, and the transaction is then ended by the surrender of the stock by him and the cancellation of his obligation by the association. Frequently, the obligations taken by building associations from borrowing members very imperfectly express the true relation of the parties to each other, as determined by the object in view and the rules for the government of the association, but they should never be considered as establishing a new relation at variance with the fundamental principles on which such associations are organized and conducted unless the language will admit of no other construction."[25]

Repayment of Loans.

§ 78. The Act of April 10, 1879, Sec. 4, P. L. 16 provides, "A borrower may repay a loan at any time, and

[22] Common Pleas No. 1, Dec. Term, 1909, No. 2723; a short unpublished opinion was filed, as follows: "We think the language of the mortgage indicates that it was to run for more than one year. Rule discharged."

[23] See Appendix Section 155; Purdon's Digest (13th Edition), Vol. 1, Page 552.

[24] Freemansburg B. & L. Assn. vs. Watts, 199 Pa. 221.

[25] In case of insolvency of the association all loans become due at once. Com. vs. Globe Mutual B. & L. Assn. of Pittsburg, 30 C. C. 98, 13 D. R. 477. See Section 128.

in case of the repayment thereof before the maturity of the shares pledged for said loan, there shall be refunded to such borrower (if the premiums, bonus or interest shall have been deducted in advance) such proportion of the premiums, bonus or advance interest bid as the by-laws may determine: Provided, That in no case shall the association retain more than the one-hundredth of said premiums or bonus for each calendar month that has expired since the date of the meeting upon which the loan was made, or if the interest in advance, it shall retain only the interest due on the loan up to the time of settlement: And further provided, That such borrower shall receive the withdrawing value of the shares pledged for said loan, and the shares shall revert back to the association."[25a]

While the Act does not expressly say so, no doubt the association would be compelled to accept part payment at any time, but this question has never been raised as it is the universal custom to do so. This means, however, that a loan can be repaid at any time that an association meets for the purpose of receiving and loaning money, and if repayment of a loan is accepted between meetings interest can be and generally is charged up to the following meeting. The borrower is not compelled to cancel his stock, he may repay his loan in full and retain his stock.[26] The provision in the act was inserted for the protection of the stockholder, and intended to give him the privilege, on repayment of his loan, to have credited the value of the stock held, and it is not obligatory upon him to accept the withdrawal value and cancel the stock.[27] When the borrowing stockholder elects to apply his stock in part payment of his loan, the proper course is to deduct from the withdrawal value all arrearages and credit the balance to the loan.[28]

[25a] This does not refer to a straight bond and mortgage.

[26] Springville, etc., Assn. vs. Raber, 33 Leg. Int. 329; 24 Pittsb. L. J. 23.

[27] Winn vs. New Southwark Building Assn., 20 Dist. 625.

[28] Building Assn. vs. Rood, 2 Kulp 246.

CHAPTER X.

PAYMENTS TO THE ASSOCIATION AND THEIR APPLICATION.

To Whom Payment May Be Made.

§ 79. The by-laws of the association usually designate the officer or committee who are authorized to receive payments of money due the association and also the time and place where payment is to be made and under these circumstances payment to any other person or at any other time or place is not binding on the association unless it is further shown that the association actually received the money.[1] Notwithstanding this, the corporation may by its conduct depart from its appointed method and set up a different one, which, under certain circumstances will be binding upon it. The authority of an officer of a corporation as its agent, although distinctly designated by the corporation, may be ascertained to be different, from circumstances covering a period of time long enough to manifest a course of dealing, provided such circumstances are known to and acquiesced in by the board of directors, and if the course of dealing is one the board had power to authorize.[2] Where the by-law designates the official to receive payment but does not designate the place of payment then payment to the proper official at any place is binding.[3] Payment by check is not ipso facto payment to the association, but if the association or one of its authorized officers receives the check and delays collection

[1] Louchheim vs. Somerset B. & L. Assn., 211 Pa. 499.

[2] Id.

[3] Schutte vs. California B. & L. Assn., 146 Pa. 324.

for an unreasonable time, and by reason of such delay the check becomes uncollectable the association must bear the loss.[4]

Receipt for Payment.

§ 80. The act of June 12, 1907, P. L. 525, provides "Section 1. Be it enacted, etc., That every bank, trust company, saving fund society, *building and loan association*, bond and investment company, provident association or company, or any other corporation now, or which may hereafter be, placed under the supervision of the Commissioner of Banking, or which may hereafter be incorporated, whether domestic or foreign, shall furnish each depositor or investor with a receipt in full, by pass-book or otherwise, for all moneys received, whether as deposits, dues, or on account of instalments for any trust or investment whatever, which, until refunded, shall constitute a liability upon the part of the corporation, and shall be kept in proper form on books prepared for the purpose." [4a]

Appropriation of Payments.

§ 81. All payments to the association made by a borrower should be credited to the account of dues, interest, premium and fines before any payments are credited on the loan account. The borrower is under obligation by his contract and the by-laws to pay his dues, interest, premium and fines, but he is under no obligation to repay

[4] Kilpatrick vs. Home B. & L. Assn., 119 Pa. 30. In this case the Court said: "It cannot, of course, be claimed that the receipt of Beeby's check was per se payment of the association's claim. It is well settled that, in the absence of an agreement to the contrary, a check or promissory note, of either the debtor or a third person, received for a debt, is merely conditional payment, that is, satisfaction of the debt, if and when paid; but the acceptance of such check or note implies an undertaking of due diligence in presenting it for payment, etc., and if the party from whom it is received sustains loss by want of such diligence, it will be held to operate as actual payment."

[4a] This act does not deprive a building and loan association of the right to make a by-law to the effect that if a shareholder wishes to withdraw before the maturity of his shares, there shall be a deduction of one dollar per share as an approximate amount to be contributed by him to the expenses of the association. See opinion of Atty. Gen. Bell, 39 C. C. 91; 21 D. R. 47.

the principal of the loan except out of his stock payments. On the principal debt itself he need only pay the interest and premium bid, but if the dues, interest or fines remain unpaid he is compelled to pay a much heavier rate of interest, usually two per cent. per month, on all arrearages. It would, therefore, be disadvantageous to the borrower to credit his loan with the payment and at the same time leave his dues, interest or fines unpaid. The intention of the parties is not to make direct payments on the debt;[5] payments on account of stock do not ipso facto work an extinguishment of the debt unless either the debtor or the association so applies it.[6] The borrower's liability on his stock subscription and his liability on his loan being different, the payment of dues is only indirectly a payment on the loan,[7] and in order to effectuate an application of such payments an election is required by some party entitled to it.[8] If there has been no appropriation of payments on the stock to the debt, by one of the parties entitled to make it, such payments cannot be set up as payments on the mortgage.[9]

Appropriation of Payments on Stock to Loan by Borrower.

§ 82. A borrower from an association who has deposited his stock as collateral for the loan may, before the intervention of the rights of creditors, direct appropriation of his payments on the stock to the extinguishment of the debt, and where the appropriation is made at the inception of the contract, it cannot thereafter be successfully questioned. This statement was made in a leading case[10] and that it is wrong both in principle and practice is not open to question, for in case the association becomes insolvent, and it is generally in cases of insolvency that the

[5] Freemansburg B. & L. Assn. vs. Watts, 199 Pa. 221.

[6] Johnson vs. Sharon Bldg. Assn., 16 Superior 311.

[7] Haspel vs. Moffitt, 32 Superior 344.

[8] In re Treffeison, 3 Kulp 308 (Luzerne County).

[9] Link vs. Germantown Bldg. Assn., 89 Pa. 15.

[10] York Trust Co. vs. Gallatin, 186 Pa. 150; Stoddart vs. Myers, 52 Superior 179.

ruling becomes important, the result is that the borrower who has made an appropriation receives full credit on his loan for the payments on account of stock, while the borrower who has made no appropriation,[11] or the member who has made no loan, must bear the burden of the losses. This is not in harmony with the general principle that all members whether borrowers or non-borrowers should share profits or losses alike. The Supreme Court admitted its error nine years later, when another case presenting the same facts was before it, but affirmed the prior decision on the doctrine of stare decisis.[12] It is interesting to note, however, that when the same facts came before the Superior Court they found some pretext to distinguish the case and get away from the decision.[13] It seems to be a safe conclusion to say that the courts would only follow York Trust Co. vs. Gallatin on an exactly similar statement of facts and are likely to look for an excuse not to follow it.[14] An appropriation made by the borrower after insolvency or on the eve of insolvency of the association would have no effect,[15] and the burden is on the debtor, as in all other cases, to prove a discharge from any part of his indebtedness,[16] and there must be direct evidence of an appropriation.[17] A borrower cannot make an appropriation after a creditor has attached the stock in the hands of the association,[18] or after he has assigned his stock subject to the association's lien, he cannot direct that the association should first look to the real estate for payment,[19] or

[11] Usually either all or none of the borrowers in the same association make an application at the time the loan is made, as the papers are generally uniform, having been prepared by the same solicitor.

[12] Kurtz vs. Campbell, 218 Pa. 524.

[13] Globe Mutual B. & L. Assn. vs. Schutte, 29 Superior Ct. 265; Haspel vs. Lyons, 38 Superior Ct. 334; Haspel vs. Moffitt, 32 Superior Ct. 344.

[14] In the case of Freemansburg B. & L. Assn. vs. Watts, 199 Pa. 221, the court said of York Trust Co. vs. Gallatin, supra: "That case stands on its own facts, and is one not to be reasoned from."

[15] Haspel vs. Lyons, 38 Superior 334.

[16] Freemansburg B. & L. Assn. vs. Watts, 199 Pa. 221.

[17] Haspel vs. Lyons, 38 Superior 334.

[18] Egolf B. & L. Assn. vs. Cleaver, 228 Pa. 60; Central Bldg. Assn. vs. Schmitt, 12 W. N. C. 239.

[19] Wadlinger vs. Washington German B. & L. Assn., 153 Pa. 622.

to the stock [20] for he loses his right or appropriation by making an assignment. He may estop himself from making an appropriation by his conduct [21] or by agreement.[22]

Appropriation of Payments on Stock to Loan by the Association.

§ 83. In case of default the association may also make an appropriation of payments on the stock on account of the loan by virtue of the assignment of the stock as collateral security,[23] but in order to effectuate such an application an act of appropriation is required.[24] There must be some positive action such as a resolution of the board of directors making an appropriation. In the absence of an appropriation by either the debtor or the association a purchaser at sheriff's sale of the real estate subject to the mortgage, cannot compel an appropriation of the stock payments to the reduction of the mortgage debt.[25]

Appropriation by Strangers.

§ 84. There are only two parties to a building association contract who can appropriate the stock payments to the mortgage debt, the borrower [26] and the association. Strangers to the transaction can require nothing that the parties did not.[27] After the borrower has assigned his stock to a third party he has forfeited his right to demand an appropriation; the association is then vested with full power either to appropriate or not, and cannot be compelled to do so either by the borrower or by third parties.

[20] Schober vs. Accommodation S. F. & L. Assn., 35 Pa. 223.

[21] Id.

[22] Kelly vs. Perseverance Bldg. Assn., 39 Pa. 148.

[23] North American Bldg. Assn. vs. Sutton, 35 Pa. 463.

[24] Johnson vs. Sharon Bldg. Assn., 16 Superior 311.

[25] Spring Garden Assn. vs. Tradesman's Loan Assn., 46 Pa. 493; Economy Bldg. Assn. vs. Hungerbuehler, 93 Pa. 258.

[26] The personal representative of the borrower, such as his administrator or executor, may also direct an appropriation, or the debtors assignee for the benefit of his creditors. Spring Garden Assn. vs. Tradesman's Loan Assn., 46 Pa. 493.

[27] Lewin vs. Building and Loan Assn., 23 C. C. 55; 9 D. R. 507.

no matter what their equities may be.[28] In the absence of an appropriation by either party a purchaser at sheriff's sale of the mortgaged premises cannot compel an application of the stock payments to the reduction of the mortgage debt.[29] If the borrower dies and the administrator does not make application to have the stock payments applied to the mortgage debt, the next of kin cannot compel such an application.[30] A person who goes security for a loan may demand that the association apply payments on stock to the reduction of the debt, and is entitled to subrogation to the association's rights as to collateral.[31]

How Appropriation Is Made.

§ 85. The appropriation of stock payments to the debt is often made at the time the debt is contracted. It is something more than a mere assignment of the stock as collateral security. It is an express direction by the borrower to regard all payments on stock as payments on the loan. It can be in the assignment of stock itself or in a separate paper,[32] or in the bond.[33] If there is a default and the appropriation is made by the association there must be some unequivocal and positive action taken such as a resolution of the board of directors. The testimony of officers that they considered stock payments as payments on the loan is not evidence of an appropriation.[34] The acceptance by the association of an assignment containing an appropriation is an agreement that is mutually binding as an express appropriation and when made at the inception of the contract of loan cannot thereafter be successfully questioned.[35]

[28] Id.

[29] Erthal vs. Glueck, 10 Superior 402; Spring Garden Assn. vs. Tradesman's Loan Asso., 46 Pa. 493; Economy Bldg. Assn. vs. Hungerbuehler, 93 Pa. 258.

[30] Kingsessing Bldg Assn. vs. Roan, 9 W. N. C. 15.

[31] Diemer vs. Egolf, 1 Chest. Co. 55.

[32] Erthal vs. Glueck, 10 Superior 402.

[33] Commonwealth vs. Anchor B. L. A., 10 Dist. 167.

[34] Economy Bldg. Assn. vs. Hungerbuehler, 93 Pa. 258.

[35] York Trust Co. vs. Gallatin, 186 Pa. 150. See also Erthal vs. Glueck supra; Stoddart vs. Myers, 52 Superior 179.

CHAPTER XI.

THE PREMIUM.

What Is a Premium.

§ 86. A premium is an amount in excess of the usual or legal rate of interest which a member bids and agrees to pay for priority in obtaining a loan or advance in preference to other members who also desire a loan or advance when there is not enough money in the treasury to accommodate all. The premium bid may be a lump sum to be deducted in advance,[1] or to be paid in periodical instalments, or the interest on the loan may be deducted in advance in lieu of the premium or bonus.[2, 3] Premiums form part of the earnings or profits of the association and should be divided equally among all the shares. The payment of premiums in periodical instalments is the plan most generally used. Premiums accruing to an association, in conformity with the law, are not usurious and may be collected like any other debt.[4]

Kinds of Premium—Gross Premium.

§ 87. There are many kinds of premium plans. The ninth annual report of the United States Commissioner

[1] When a building association takes a mortgage for an amount in excess of the loan, a presumption arises that the difference constitutes the premium. Selden vs. Reliable S. & B. Assn., 81½ Pa. 336, 2 W. N. C. 481; Johnston vs. Elizabeth B. & L. Assn., 104 Pa. 394.

[2] Act of April 10, 1879; P. L. 16, Sec. 1; Purdon's Digest (13th Edition), Vol. 1, Page 551. See Appendix Section 152.

[3] The certificate of incorporation of each association must set forth whether the premium or bonus bid for the prior right to a loan shall be deducted therefrom in advance or paid in periodical instalments, or whether interest in advance shall be deducted from the loan in lieu of premium or bonus. See Note 2, supra.

[4] Act of April 29, 1874; P. L. 73, Sec. 37, Clause 6; Purdon's Digest (13th Edition), Vol. 1, Page 500. See Appendix Section 147.

of Labor issued in 1893 describes sixty-eight, but for the purpose of this book they can all be classified under two heads: First, what is known as the gross premium plan; Second, the instalment plan. In the gross premium plan the bid is of a lump sum or percentage to be deducted from the face of the loan before the money is turned over to the borrower.[5] In case the loan is repaid before the maturity of the shares pledged for the loan the borrower must have refunded to him such proportion of the premium as the by-laws may determine, provided that in no case may the association retain more than one-hundredth of the premium or bonus for each calender month that has expired since the date of the meeting at which the loan was made.[6]

The Instalment Premium Plan.

§ 88. Under the instalment premium plan the prospective borrower makes a bid of as many cents per share as he is willing to pay periodically in addition to dues and interest for the loan or advance. This payment generally continues until the loan is repaid. The advantage of this plan is that the borrower knows before the bidding how much money he will receive if a loan is awarded to him and makes his plans accordingly. It also makes the bookkeeping of the association much more simple. Under the gross plan an earned and unearned premium account must be kept, for it may be necessary to return part of the premium in case the loan is repaid before the expiration of one hundred months from the time it was granted. In

[5] Interest is charged on the face of the loan, which includes interest on the premium deducted. There is also what is called the "net premium plan," where the premium is deducted in advance, as under the gross plan, but interest is charged only on the net sum received by the borrower.

[6] Act of April 10, 1879; P. L. 16 Sec. 4; Purdon's Digest (13th Edition), Vol. 1, Page 552. See Appendix Section 155. Edmund Wrigley, writing in 1876, says: "The premium account under this plan of proceeding is always a fictitious account, for the reason that in case a borrower desires to repay a loan at any time before the stock on which it is advanced has reached its ultimate value, a pro rata portion of the premium originally deducted is required to be returned to him, representing that portion of the time between the issue of the stock and its ultimate maturity, which has not yet lapsed or become exhausted."

a serial association it is a difficult problem to apportion the gross premium earned among the various series. The instalment plan has the advantage of allowing the borrower to pay as he goes and to stop paying when he stops going, which is always a sound business principle.

Authority to Charge Premiums.

§ 89. The act of April 29, 1874, P. L. 73, Section 37, clause 6, provides:

"No premiums, fines or interest on such premiums, that may accrue to the said corporation, according to the provisions of this act, shall be deemed usurious; and the same may be collected as debts of like amount are now by law collected in this Commonwealth."

The power to charge premiums does not extend to corporations not chartered under the act of 1874 and its supplements [7] and controlled in accordance with its provisions. The premiums, fines and interest on such premiums, which the statute declares shall not be deemed usurious, are those which accrue according to its provisions.[8] A foreign association,[9] or an unincorporated association [10] is not entitled to the privileges of this act and only the amount actually loaned with legal interest can be recovered by them. The same is true when an association loans money to a non-member "or when money is loaned at a fixed premium without bidding." [12] The act allowing associations to charge a premium in excess of the legal rate of interest confers a special privilege and in order to collect it the provisions of the statute must be complied with. It is an exception to general law and they must bring themselves within the exception.

[7] There are a few associations chartered under prior acts that would have the right.

[8] Land Title and Trust Co. vs. Fulmer (No. 1), 24 Superior 256.

[9] Id.

[10] Jarrett vs. Cope, 68 Pa. 67.

[11] Wolbach vs. Lehigh Building Assn., 84 Pa. 211.

[12] Stiles's Appeal, 95 Pa. 122. When an agreement to pay premium is in writing and not in excess of two per cent per annum it is valid without competitive bidding, see Section 1 (c), act of May 14, 1913. This section of the act is not retroactive, and all agreements to pay a premium, in excess of the legal rate of interest, made before its passage and without competitive bidding are invalid.

Justification for Premiums.

§ 90. The right to charge a premium is one of the most extraordinary of the many special powers granted to building and loan associations. It is justified upon the theory that while these institutions are in fact corporations they have many attributes of a co-partnership. They are purely mutual and the profits of which the premium forms a part is and must be equally divided among all the members in proportion to the value of their stock holdings, whether they are borrowers or not. Of course, the burden of the premium falls upon the borrower and is mainly to the advantage of the unadvanced member, but the borrower has had the advantage of having the matured value of his stock advanced to him at a time when other members who also desired an advance were unable to secure it, and the additional profit is only compensation to the unadvanced member for the disappointment in not procuring a loan, and a payment by the borrower for the preference shown him. No member can be compelled to make a loan at a premium and he is the best judge whether it is advantageous to him to pay more than the legal or usual rate or not. Building associations are a good thing for any community and the legislature and the courts have always regarded them as such. It is, therefore, advisable to give them rights with proper safeguards that will make them thrive and prosper. To say that the right to charge premiums is sometimes abused is no argument against it. The same may be said of any right. The proper method is to stop the abuse.

The Necessity of Competitive Bidding.

§ 91. The right to charge a premium above the legal rate of interest, as has already been stated, is an exception to the general law of the state, and in order to make the premium valid and binding the association must bring itself within the exception by complying with the law, especially with the provision that requires competitive bidding. The act of April 29, 1874, P. L. 73, Sec.

37, clause 4,[13] provides that all money "shall be offered for loan in open meeting, and the stockholder who shall bid the highest premium for the preference or priority of loan, shall be entitled to receive a loan of not more than the amount fixed by charter as the full value of a share for each share of stock held by such stockholder."[14] The money in the treasury must, therefore, be offered in open competition, so that a member may obtain a loan at as low a premium as possible, or without any premium if there are no other bids,[15] and the act of June 4, 1901, P. L. 403,[16] conferring the right to receive bids in writing does not change the law in regard to competitive bidding.[17] The making of loans at a previously fixed premium in addition to legal interest, in the order of application, is unlawful, and if this is done, the member may set off against the principal of his loan all premiums paid in excess of the legal rate of interest.[18] The fact that there was no competitive bidding can be set up as a defence to a writ of scire facias sur mortgage or can be adjusted in a bill in equity to compel the satisfaction of a mortgage and for an accounting.[19] The amount of premium illegally collected is a defence pro tanto against the enforcement of debt due the association,[20] but the borrower having voluntarily paid the illegal premium is not entitled to interest on such payments.[21] It must appear that the borrower was really prejudiced by the operation of the illegal rule or by-law. If no bid was refused because it was below the minimum rate, and the loan was awarded to the borrower upon a bid by himself alone, or in consequence of competition with other bidders, at a premium above the minimum, he was not injured by the fact that an illegal rule had been estab-

[13] Purdon's Digest (13th Edition), Vol. 1, Page 550. See Appendix Section 146.

[14] See, however, next section for necessity of competitive bidding since the act of May 14, 1913.

[15] Stiles's Appeal, 95 Pa. 122.

[16] See Appendix Section 166.

[17] Roeser vs. German Nat. B. & L. Assn., 32 Superior 100.

[18] Klein vs. Pennsylvania Sav. F. & Loan Assn., 216 Pa. 516.

[19] Roeser vs. German Nat. B. & L. Assn., 32 Superior 100.

[20] Id.

[21] Id.

lished and is liable for the premium bid.[22] If a bid is made without authority it may later be ratified in writing and where a member subsequently in writing directs the association to appropriate a portion of the loan to premiums bid, the member is estopped thereafter from denying the authority of an agent to make the bid.[23] All borrowers must compete in the bidding, no matter what kind of security they offer, as long as the security itself is approved.

Necessity of Competitive Bidding Since the Act of May 14, 1913.

§ 92. The act of May 14, 1913, Sec. 1, paragraph c, does away with the necessity of competitive bidding when the agreement to pay the premium is in writing and is not in excess of two per cent per annum.[24] This section of the act is not retroactive and, therefore, all loans made before its passage, or where the agreement to pay the premium is not in writing, or where the premium is in excess of two per cent. per annum are governed by the law as stated in the preceding section.

Effect of Insolvency on Premium Paid.

§ 93. The payment of the premium by a borrower is said to be in consideration of his being allowed to repay his loan in small periodical payments on his stock until its maturity pays his loan, therefore, if the association becomes insolvent it is unable to keep its contract with the borrower and it has not earned the premium. If the premium has been paid in advance in case of insolvency the association is entitled to recover only the amount actually paid to the borrower, with interest, crediting him with all actual payments of interest.[25] Where the premium is paid in instalments the principle is the same and the

[22] Orangeville Mut. S. F. & L. Assn. vs. Young, 9 W. N. C. 251.

[23] Equitable B. & L. Assn. vs. Thomas, 216 Pa. 571.

[24] See Appendix Section 182 for statute.

[25] Strohen vs. Franklin Sav. Fund & L. Assn., 115 Pa. 273; State Sav. & Loan Assn. vs. Carroll, 15 C. C. 522.

result should be the same, and, therefore, the borrower should be charged with the amount received, with interest thereon, less the amount paid whether in the nature of interest or premium.[26] While this statement of the law is in accordance with the decisions cited it is submitted that it is inequitable and works injustice. When the premium is paid in advance a part of it is considered as earned each month, and when it is paid in instalments, the instalments are considered earned as paid. Much of it may have already been distributed. Prior series may have been matured and paid on account of this supposed profit, which must now all be repaid out of the funds of the remaining stockholders. The borrower has had the benefit of the contract up to the time of the insolvency of the association. This may have been for a long or a short time. If the premium has been paid in advance it would be more equitable to charge him with the premium earned and return to him the balance the same as a borrower who withdraws under the provisions of the act of April 10, 1879, P. L. 16, Sec. 4.[27] If the premium is paid in instalments it should be paid up to the time of insolvency which dissolves the contract. As the law is now a borrowing stockholder may actually profit by the association's insolvency as the amount of premium with which he would be credited may be larger than his proportion of the profits would have been if the association had not become insolvent.

[26] Twin Cities Nat. B. & L. Assn. vs. Lapore, 17 C. C. 426; Mercantile Trust Co. vs. Jones, 48 P. L. J. 266.

[27] See Appendix Section 155.

CHAPTER XII.

FINES.

Definition.

§ 94. A fine is a penalty in the nature of liquidated damages imposed to enforce promptness in the payment of amounts due the association and to compensate it for the loss of profits it might have earned upon the money and for the interruption to its usual course of business.

Authority to Impose Fines.

§ 95. While a fine is said to be in the nature of liquidated damages it is a penalty to the extent that it exceeds the amount that the association could have earned upon the money if it had been paid when due. This being true the excess could not be collected without express statutory authority. The imposition of fines by building associations is authorized in Pennsylvania by the Act of April 12, 1859, P. L. 544, and the Act of April 28, 1874, P. L. 73, Section 37. Prior to the Act of April 10, 1879, P. L. 16, section 6, the amount of fines was regulated only by the by-laws of each association and in some instances was as high as ten per cent. per month on all arrearages. This later act provided:

"Fines or penalties for the non-payment of instalments of dues, interest and bonus or premiums, shall not exceed two per centum per month on all arrearages."

A by-law, therefore, which imposes fines in excess of this amount is void and no fines at all could be collected. The excess is fatal to the validity of the by-law and it is, therefore, without any force.[1] The fine must be authorized by

[1] Lynn vs. Freemansburg B. & L. Assn., 117 Pa. 1.

the by-laws, and unless authorized cannot be collected.[2] If the by-law is ambiguous the courts will adopt the construction most favorable to the member,[3] but where a by-law provided "Fines or penalties for the non-payment of dues, premium and interest shall *not exceed* two per centum per month on all arrearages" it was held to impose the maximum penalty.[4]

Reason and Purpose of Fines.

§ 96. The whole scheme of a building and loan association depends upon its right to impose a penalty in excess of the legal rate of interest and also in excess of the probable profits upon a member who does not make payments when due. The success of the plan depends upon prompt payment by each member so that the regular and steady accumulation of money may produce a fund for investment by the association and attract borrowing members. To confine the association to damages actually sustained by the failure of a member to pay promptly would practically enable him to ignore his obligations and make payments at his own convenience. If it was not for this excess payment members would pay as they pleased and the virtue of the plan of compulsory periodical payments would be lost. The thought back of the whole building association idea is the common good of all stockholders, and the system of fines has always been recognized as an essential part of the plan, and tends to maintain the general scheme of mutuality. The member who pays the fine derives benefit therefrom as a member of the association in common with other stockholders; no injustice is suffered for he can stop the running of fines by paying the arrearages, or, he can withdraw from the association even if he is a borrower, for the loan is payable at any time, or if he is unable to pay his arrearages, or arrange for the repayment of his loan, he can notify

[2] Building Association vs. George, 3 W. N. C. 239.

[3] Id.

[4] Harris B. & L. Assn. of Harrisburg vs. Simon, 19 C. C. 110; 6 D. R. 204. In this case it was the custom of the association to charge fines at the rate of two per centum per month on all arrearages.

the association of his inability to pay and that he desires it to foreclose upon his property in order to stop the running of fines.[5]

Regulation of Fines.

§ 97. The amount of fines should be regulated by by-law[6] which should be precise in its terms and clear in its meaning, as the courts do not favor penalties of any kind and generally decide against them if possible. A by-law which provides "Fines or penalties for the non-payment of dues, premium and interest shall not exceed two per cent. per month on all arrearages," is explicit and unequivocal: it does not impose the minimum or any intermediate penalty authorized by the act, but it does impose the maximum penalty, especially where the maximum has been the custom of the association.[7] Prior to the Act of April 10, 1879, P. L. 16, section 6, it was only necessary for the fines to be reasonable, and if they were unreasonable no portion of the fines could be collected as the court would not say which part was reasonable or unreasonable,[8] and if illegal fines have been paid the member may set-off such payments in a suit on a mortgage given to the association.[9] Fines may be compounded monthly and for an indefinite time and the association is not bound to forfeit the stock at the end of six months to prevent their accumulation by arithmetical progression,[10] and the member is not relieved from the payment of fines because of the neglect of the secretary to charge such fines against him on the books of the association. The fines are payable under the by-laws, and, whether entered in the books or not, are due and payable by the delinquent member.[11] The question whether fines accruing after foreclosure proceedings are begun can be

[5] Workingmen's L. & B. Assn. vs. Heaton, 233 Pa. 173.

[6] Building Assn. vs. Schuller, 3 W. N. C. 431; Building Assn. vs. George, 3 W. N. C. 239.

[7] Harris B. & L. Assn. vs. Simon, 19 C. C. 110; 6 D. R. 204.

[8] Lynn vs. Freemansburg B. & L. Assn., 117 Pa. 1.

[9] Id.

[10] Workingmen's B. & L. Assn. vs. Heaton, 233 Pa. 173.

[11] Folsom B. & L. Assn. vs. Gogel, 24 Superior 539.

collected, has never been decided in this jurisdiction. It seems that they should be until there is notice of withdrawal by the member or a forfeiture of the stock by the association. The beginning of foreclosure proceedings does not of itself terminate membership.[12] The member may still pay off his entire obligation, or enough may be realized by a sale on a judgment secured upon the mortgage to repay the loan, leave the stock free, and the payments on the stock continued.[13] Of course the real estate cannot be charged with fines after judgment is entered but the stock itself is always liable until it goes out of existence either by withdrawal or forfeiture.

Who Are Liable for Fines.

§ 98. When an association loans money to a person not a member it cannot recover fines,[14] or from a person not sui juris.[15] When a loan is made partly on straight bond and mortgage as to that part of the loan no fines can be collected.[15a] Since the Act of April 10, 1879, P. L. 16, Section 7, a married woman is liable for fines the same as any other member. Fines against a stockholder, accuring after an assignment by him for the benefit of creditors are not payable out of the assigned estate.[16] When the mortgage does not embrace or secure the fines, they cannot be charged on the land in a suit on the mortgage.[17] Unpaid fines which accrued before insolvency may be collected whether the stockholder is a borrower or not.[18] The act of April 29, 1874, P. L. 73, Sec. 37, Paragraph 2, provides "No fines shall be charged to a deceased member's account from or after his or her decease, unless the legal representatives of such decedent assume the future payments on the stock." [19]

[12] Watkins vs. Workingmen's B. & L. Assn., 97 Pa. 514.
[13] North American Bldg. Assn. vs. Sutton, 35 Pa. 463.
[14] Wolbach vs. Lehigh Bldg. Assn., 84 Pa. 211.
[15] Id.
[15a] Act of May 14, 1913, Section 1, Par. (b); Appendix Section 181.
[16] Boyer's Estate, 1 York 193.
[17] Hazel L. & B. Assn. vs. Groesbeck, 17 Phila. 242, 41 Legal Int. 16.
[18] Mercantile Trust Co. vs. Jones, 48 P. L. J. 266.
[19] See Appendix Section 144.

CHAPTER XIII.

FORFEITURE.

What Is a Forfeiture?

§ 99. Forfeiture of a member's stock is not such a harsh procedure as the word itself would seem to imply. It does not mean that the member thereby loses all the money he has paid to the association. He is still entitled at least to the amount actually paid in as dues, after deducting any loan or loans made to him and his proportionate share of all losses and expenses of the association. A forfeiture of a member's stock interest without giving him any credit for his payments would be inequitable and would not be allowed.[1] In most cases a forfeiture is an act of kindness, for if a member were allowed to continue delinquent the accumulation of fines would in time amount to more than the amount paid in, and wipe out any value his stock may have had. The right is almost invariably exercised with discretion and only in those cases where it is to the member's interest to terminate his membership in the association or in the case of a borrower, the interests of the association imperatively demand it. The right of forfeiture is essential to the conduct of an association. There must be a time when an association can even, against the protest of a defaulting member, liquidate his interest and close his account. The liability of a member's stock to forfeiture also has the effect of inducing prompt payments by penalizing the delinquent, as there are always some members who though able to pay never do so unless coersive measures are used. Of course, a member often becomes delinquent through no fault of his own. It is a case of misfortune, not improvidence. In such a case it can only be said that the board of directors should use discretion and only exercise the right where it appears that the member is unwilling or never will be able to make the

[1] Folsom B. & L. Assn. vs. Gogel, 24 Superior 539.

payments, or where the interests of the association imperatively demand it. To be exact, a forfeiture in the ordinary sense of the term never takes place. It is merely a change of relationship toward the corporation from stockholder to creditor, a change made necessary by the member's unwillingness or inability to fulfill his obligations.

Right to Declare Forfeiture.

§ 100. The right to declare stock forfeited so far as statutory authority may be required, seems to be taken for granted as the Acts of 1874 and 1879 while they make mention of forfeited stock, nowhere give the express power to declare stock forfeited unless section 5 of the Act of April 10, 1879 P. L. 16[2] can be so construed. This section provides:

"In case of non-payment of instalments of stock, premiums, dues or interest, by borrowing stockholders, for the space of six months, payment of the same, together with the full principal of the loan, may be enforced by proceeding on their securities according to law; and the moneys so recovered shall be paid into the treasury of the association for such uses (loans or otherwise) as may be deemed proper by the association; and if the said moneys so recovered, together with the withdrawal value of the shares of such defaulting borrower shall exceed the amount it would have required according to the preceding section, to have voluntarily repaid the loan, together with all the expenses incurred by the association, such excess shall be repaid to such defaulting borrower."

This section, however, refers only to borrowing stockholders. The application of payments on account of stock to a loan is also proper by virtue of the assignment of the stock to the association and also by reason of the terms of the bond and mortgage or other obligation given for the indebtedness. The by-laws of associations which are more or less uniform usually provide for the forfeiture of stock of non-borrowers for six months non-payment of dues, interest or fines. The right of an association to forfeit or cancel stock has, however, never been questioned.

[2] See also Act of April 29, 1874; P. L. 73, Sec. 37, Clause 1; Appendix Section 143.

Method of Forfeiture.

§ 101. The manner of declaring or enforcing a forfeiture is usually prescribed by the by-laws in conformity with the statute; and the provisions of the by-law must be strictly followed [3] as the validity of the act depends upon strict compliance therewith.[4] It never takes place until it is declared by the board of directors,[5] but no notice need be given. The board need not proceed at the end of six months [6] and a by-law providing for forfeiture for nonpayment of dues, fines or interest for a less period would no doubt be relieved against by the courts as unreasonable. The courts have always exercised the right to relieve against forfeitures when they are convinced that injustice has been done, no matter what the contract between the parties may be, but as the six months period is fixed by statute, when the time has expired, they cannot interfere.

Effect of Forfeiture.

§ 102. The effect of forfeiture is to discontinue the peculiar relationship that exists between the member and the association and substitute therefore that of debtor and creditor. It dissolves all obligations of both parties except an adjustment of their accounts. If the stock has not been borrowed upon, the stockholder is entitled to a return of the amount actually paid in, less fines, his proportion of losses, if any, and other proper charges. If the stock has been borrowed upon the member is entitled to a credit for the amount on his loan and the association may proceed to collect any balance that may be due it. No fines or premiums can be collected after forfeiture is declared, but only legal interest on the amount then due. A borrower, however, may continue to be a member and subject to fines after foreclosure and sale of the mortgaged premises provided he did not receive credit for his stock payments in the proceeding,[7] "for how could the member have a credit for the stock and yet retain it?" [8]

[3] Germantown, etc., vs. Fitler, 60 Pa. 124.
[4] North American B. Assn. vs. Sutton, 35 Pa. 463.
[5] Watkins vs. Workingmen's B. & L. Assn., 97 Pa. 514.
[6] Workingman's L. & B. Assn. vs. Heaton, 233 Pa. 173.
[7] North American Building Assn. vs. Sutton, 35 Pa. 463.
[8] Watkins vs. Workingmen's B. & L. Assn., 97 Pa. 514.

CHAPTER XIV.

THE BOND, MORTGAGE AND NOTE.

The Obligation.

§ 103. There should be some written evidence of the amount of the loan to a member and the terms upon which it is made and the writing, or obligation, as it is sometimes called, is generally in the form of a note or a bond and mortgage in addition to an assignment of the member's stock. When obligations include a mortgage on real estate it is placed on record in the proper office in order to give actual or constructive notice to the world of the property given as security in order to procure priority of lien. The bond, which contains a confession of judgment is also sometimes placed on record but generally only in the case of a default. The bond is the principal evidence of the debt. The mortgage is given to secure the performance of the conditions of the bond, therefore, the bond and mortgage must conform. The phraseology and condition of the obligations taken by the different associations, especially the bonds and mortgages, are more or less uniform, but many associations have special printed forms which contain special stipulations made to meet changes in the law and judicial interpretaitons of it, and omitting obsolete and useless phraseology.[1] Too much stress cannot be laid upon the advantage of having all writings in any one association uniform. This enables the officers and directors to be familiar with the terms and conditions of every loan. The work of the solicitor, conveyancer and secretary is

[1] Many of the printed forms now in use contain provisions that have become useless, while they do not contain provisions that legislation, judicial interpretation and changed conditions have made necessary in order to fully protect the association.

thereby simplified, as close scrutiny of every instrument is not necessary except to see to its proper execution. It is also fairer to the members as the same terms and conditions are thereby imposed upon all. If the obligation is for a greater sum than that actually advanced the difference is presumed to be premium.[2]

The Note.

§ 104. When a loan is made for which the member's stock is ample security, only a note is given in addition to the usual assignment of stock. This is what is known as a "stock loan." It is considered the best form of security that an association can procure, for the borrower is getting merely part of his own money back, and the lender is taking no risk. The advantage to the borrower is that, while he has the use of the money his membership still remains intact, for he surrenders none of his rights as such. The loan may be repaid at any time and the stock released from the lien and he is then in the same position as any other free stockholder.[3] A good form is to have the note reciting the conditions upon which the loan is made, together with a confession of judgment and waiving inquisition and exemption and a power of attorney to assign the stock as security in one instrument.[4]

The Mortgage.

§ 105. When we speak of a mortgage in Pennsylvania we always mean a bond and mortgage. This is because a bond is always accompanied by a mortgage. The bond is the primary obligation and the mortgage is given to secure the bond. A bond accompanying a mortgage is the principal evidence of the debt, and the mortgage is but collateral to it.[5] Only the property pledged can be sold in a suit on the mortgage, while any property, real or personal, that the

[2] Juniata Bldg. and Loan Assn. vs. Mixell, 84 Pa. 313; Selden vs. Reliable Savings & Bldg. Assn., 81 Pa. 336, 2 W. N. C. 481.

[3] Winn vs. New Southwark Building Assn., 20 D. R. 625.

[4] Such a form is printed in the Appendix.

[5] Eagle Beneficial Society's Appeal, 75 Pa. 226; Godshalk's Estate, 24 Superior 410.

obligor may own can be sold under proceedings on the bond. For this reason many people refuse to execute a bond and mortgage, but have the property conveyed to what is known as a "straw man" who executes the obligations and immediately thereafter the "straw man" conveys to them. A "straw man" is a real man of no financial responsibility and, therefore, in case of default recovery can be had only from the property actually pledged in the mortgage. There is nothing wrong in this, either in law or morals, but an association is inclined to, and should lend more liberally when the bond is signed by the actual owner of the property. The financial responsibility of the bondsman is often properly taken into consideration in accepting or refusing a loan. The association may pursue its remedies on the bond and mortgage concurrently.[6] It is not the purpose of the writer to enter into a discussion of the law relating to mortgages. To properly understand the art of drawing deeds and mortgages commonly known as conveyancing, and also the science of making searches in order to determine what estate is conveyed or pledged, and also the priority of liens and incumbrances, and whether the property is bound thereby, requires years of study and experience in order to become proficient, and is not part of the law peculiar to building and loan associations and is, therefore, omitted from this volume. All that need be said is that great care should be exercised in the selection of solicitors and conveyancers, for upon them rests the duty and responsibility of seeing that the association receives the security required by the board in granting the loan.

Form of the Mortgage.

§ 106. The form of the bonds and mortgages should be given careful consideration. Frequently, the obligations taken by building associations from borrowing members very imperfectly express the true relation of the parties to each other, as determined by the object in view and the rules for the government of the association, but they should never be considered as establishing a new relation at variance with the fundamental principles on which such asso-

[6] Juniata B. & L. Assn. vs. Hetzel, 103 Pa. 507.

ciations are organized and conducted, unless the language will admit of no other construction.[7] There is no prescribed form of a building association mortgage.[8] Its validity as such depends upon the facts and these must be taken as a whole. If the transaction was not in fact a loan by a building association to a member, no form would save it from the ordinary rules as to interest and usury, and so on the other hand if it was in fact such a loan, no mere form of instrument can deprive it of the privileges of such loans.[9] It would, therefore, seem that a mistake or omission in the mortgage, or the contract itself, would be governed and made to conform with the relationship that should exist between a member and the association, and if the by-laws were referred to in the mortgage they would become part of the contract to the same extent as if they were part of the mortgage itself.[10]

The Straight Bond and Mortgage.

§ 106[A]. The Act of May 14, 1913, Sec. 1, Paragraph (b) authorizes building and loan associations; "To permit members when loans are granted to secure the repayment thereof, if so desired, by giving to the association a straight bond and mortgage on real estate for a fixed period for an amount not to exceed one-half of the loan, and upon such other terms and conditions as may be agreed upon, and for the remainder of the loan which shall be on shares of the association an instalment bond and mortgage on real estate in form as now provided by law, provided that it shall not be lawful to collect premiums or fines on such straight bond and mortgage."[11] The act uses the term "straight bond and mortgage" in contradistinction to a building and loan association mortgage. What is meant is

[7] Freemansburg B. & L. Assn. vs. Watts, 199 Pa. 221.

[8] Originally loans to members were secured by bond and mortgage in the ordinary form, with a collateral agreement showing that it was intended to secure the payment of dues, premiums and fines. This, of course, would not now be considered proper.

[9] Building Assn. vs. Robinson, 46 Leg. Int. 5, 19 Phila. 358.

[10] An approved form of bond and mortgage is printed in the Appendix.

[11] See Appendix section 181.

a bond and mortgage in the form ordinarily given to an individual or corporation. It contains no provision for stock payments, and neither the association nor the borrower can claim those privileges or benefits which are inseparable from the building association obligation.

Provisions of the Mortgage.

§ 107. It is unnecessary to enumerate the various conditions and provisions that a building and loan association bond and mortgage should contain, as a complete recital will be found in the form printed in the appendix. The validity of provisions, such as, that in case of default in the production of tax receipts,[12] or in the maintenance of fire insurance duly assigned as collateral security, or in the payment of interest on prior incumbrances, the whole principal debt, shall, at the option of the association, become due and payable, and that if the same has to be collected by process of law, all costs and an attorney's fee may be added to the amount due has been upheld by the courts. No notice of an intention to proceed on the security is required, the commencement of proceedings itself being sufficient notice.[13] It is a member's duty to know when he is in arrears.[14] An association need not proceed on a mortgage as soon as there is a default, but may and usually does give additional time when such indulgence is likely to result in saving the property of a member,[15] without loss to the association.

Amount Due on the Mortgage.

§108. A loan from an association may be repaid at any time, whether secured by bond and mortgage or otherwise.[16] The withdrawal value of the stock may be applied in part payment or the loan may be repaid in full and the stock retained until maturity.[17] When the stock is can-

[12] Huntington, etc., vs. Melsheimer, 14 W. N. C. 344.
[13] Owen vs. Occidental B. & L. Assn., 55 Ill. App. 347.
[14] Louchheim vs. Somerset B. & L. Assn., 25 Superior 325.
[15] Workingman's B. & L. Assn. vs. Heaton, 233 Pa. 173.
[16] See Section 78. This does not apply to a straight bond and mortgage.
[17] Winn vs. New Southwark Building Assn., 20 Dist. Rep. 625.

celled the proper method of ascertaining the amount due is to charge the member with the principal of the loan together with all dues, interest, premiums and fines that are due at the time, or if repaid between meetings, the amount due at the following meeting, giving credit for the withdrawal value of the stock, as ascertained by the by-laws, as if the dues were paid in full to that meeting:[18] but a defaulting borrower whose stock is held by the association as collateral security is not entitled to profits.[19] The association need not apply the stock payments on account of the loan unless it is demanded by some party entitled to it.[20] Declarations or statements made by the secretary as to the amount due are not admissible in evidence in a suit on the mortgage, unless it also be shown that the secretary had authority to bind the association by such admissions and such authority is not inferred from the nature of his office,[21] nor is it sufficient to show that as secretary he had charge of the books and accounts of the association.[22] The borrower may show that if the profits were properly apportioned his stock would be matured and the loan repaid, even though the stock has not been declared matured by the association,[23] but on the other hand, if through fraud of the secretary stock is improperly declared matured and the mortgage satisfied, the satisfaction may be cancelled in equity,[24] for where satisfaction is shown to have been entered by mistake it is not conclusive between the parties to the transaction.[25] The bringing of proceedings against a member does not of

[18] In Building Assn. vs. Rood, 2 Kulp, 246, it was said, "That when a borrowing member elects to apply his stock in payment of his loan, the proper course is to deduct from the ascertained value of the stock all arrearages thereon and credit the balance on the loan."

[19] Watkins vs. Workingman's L. & B. Assn., 97 Pa., 514; Folsom B. & L. Assn. vs. Gogel, 24 Superior 539.

[20] See Sections 81 to 84.

[21] Erthal vs. Glueck, 10 Superior 402.

[22] Johnston vs. Elizabeth, etc., Assn., 104 Pa. 394.

[23] Charles Tyrrell L. & B. Assn. vs. Haley, 139 Pa. 476.

[24] Callahan's Appeal, 124 Pa. 138.

[25] Quein vs. Smith, 108 Pa. 325.

itself relieve the latter from continuing his payments, or, upon neglect to do so, from subjecting him to fines or penalties.[26]

Satisfaction of Mortgage.

§ 109. When a member repays his loan to the association he is entitled to a return of the security held by it and if the withdrawal value has not been applied in repayment, to have his stock re-assigned to him. If a recorded judgment or mortgage has been taken he has the right to have it satisfied of record upon payment of the cost of satisfaction. If the association does not satisfy a mortgage in the time allowed by the acts of assembly it can be compelled to do so by legal process and is liable in damages.[27] Building associations usually give to one or two of their officers a general letter of attorney to satisfy mortgages. When two are appointed the power is usually given jointly and it requires the act of both of them to enter satisfaction. This is, of course, the safer plan, but often results in inconvenience and delay which should be avoided whenever possible as it is the natural desire of a borrower to have his mortgage satisfied of record as soon as possible after payment. The letter of attorney should not be given to the treasurer as he is the custodian of the papers and a fraudulent satisfaction could be effected by him and remain undetected for a longer period than any other official. A careful treasurer should not surrender the mortgage for satisfaction unless he has evidence that the amount due has been repaid. Care should be taken that the proper mortgage is satisfied, especially when a number of them stand in the same name.

Default in Terms of Mortgage.

§ 110. In case of non-payment of instalments of stock, premiums, dues or interest by borrowing stockholders for the space of six months, payment of the same, together with the full principal of the loan, may be enforced by

[26] German Fair Hill Bldg. Assn. vs. Metzger, 3 W. N. C. 204.

[27] Crawford vs. Simon, 159 Pa. 585. For a summary of the statutes relating to the satisfaction of mortgages see note to Ollendike's Petition, 9 Dist. Rep. 95, on page 98.

proceedings on their securities according to law.[28] The associations need not proceed, but may delay without losing any of its rights.[29] When the mortgage so provides, the whole debt may be declared due and proceedings begun upon non-performance of any of the other requirements of the mortgage, the association having all the rights of any other mortgagee.[30] Thus a provision to pay taxes and exhibit receipts, in default of which the whole debt is to become due and payable, is valid and enforceable.[31] So also a provision to pay interest and produce receipts on any other incumbrance or ground rent on the mortgaged premises, or a failure to maintain fire insurance duly assigned as collateral security is enforceable. The writ of scire facias must show on its face the default on the part of the defendant on which the plaintiff relies and which has made the whole debt become due and payable so as to entitle the association to an immediate right of action.[32] The bringing of suit against a member without an application of his stock payments[33] does not relieve him from continuing his payments, and if suit is prematurely brought and discontinued, another action may be started for a default which occurred while the other suit was pending.[34] Proceedings may be had on either bond or mortgage or both remedies may be pursued concurrently.[35] No notice of the commencement of proceedings other than service of process as required by law need be given the defaulting member as he is bound to know when he is in arrears.[36]

[28] Act of April 10, 1879; P. L. 16, Sec. 5. See Appendix Section 156.

[29] Workingmen's L. & B. Assn. vs. Heaton, 233 Pa. 173.

[30] See, however, Section 77 as to the right to foreclose for non-payment of principal when there is a definite time of payment stated in the mortgage.

[31] Huntingdon Bldg. Assn. vs. Melsheimer, 14 W. N. C. 344.

[32] Swift vs. Allegheny B. & L. Assn., 82 Pa. 142.

[33] Building Assn. vs. Sutton, 35 Pa. 463.

[34] German Fair Hill B. Assn. vs. Metzger, 3 W. N. C. 204.

[35] Faber vs. Maddock, 10 Del. 481; Speer vs. Fogal, 56 Pitts. 80.

[36] Louchheim vs. Somerset B. & L. Assn., 25 Superior 325.

The Assessment of Damages.

§ 111. The assessment of damages or in other words, the amount for which judgment should be claimed or taken depends upon whether or not the stock has been forfeited before the liquidation is made. If the stock has been forfeited the principal or face of the loan should be charged to which should be added as a separate item the dues, interest and fines then due and whatever attorney's fee is provided for in the mortgage.[37] When this is totaled credit may be given for the withdrawal value of the shares, or only the amount actually paid in without any profits or interest at the option of the association. If the stock has not been forfeited the assessment is the same, except that credit is not given for the stock value. If proceedings are begun before the dues, interest or fines are six months in arrear for default in other provisions of the mortgage the better practice is not to give any credit. Credit may be given after judgment is taken by reducing the assessment or by claiming a less amount from the sheriff when he makes distribution of the proceeds of the sale. If the stock is forfeited and credit given in the assessment of damages the membership ceases and all the rights of the association are merged in the judgment which bears interest at the legal rate of six per cent per annum. If the stock is not forfeited, premiums and fines up to the time of actual distribution may be charged against the stock besides legal interest on the judgment, and fines even thereafter if the fund realized is sufficient to pay the judgment in full and the stock is not forfeited.

[37] The amount of the attorney's fee is always in the control of the court, and may be reduced on application if excessive.

CHAPTER XV.

WITHDRAWALS.

Nature and Definition of Voluntary Withdrawal.

§ 112. The right to withdraw is one of the most valuable and important attributes of membership in a building and loan association. It is one of those characteristics which distinguishes a building association from any other kind of a corporation and which makes it resemble a partnership. When a person joins he contemplates remaining a member until the maturity of his stock, but there are numerous considerations that may subsequently arise that may make it desirable or necessary that he discontinue his membership. There is no common law right of a stockholder of any corporation to withdraw. The right, if it exists at all, must be given by statute. Voluntary withdrawal is a termination of membership upon terms and in a manner provided by by-law [1] adopted in accordance with the statutes authorizing it. When the right is exercised, membership ceases and also all future liability to contribute to the common fund. The member receives back all payments made on account of dues together with such proportion of the profits as the by-laws may authorize, less all fines and other charges and his proportion of the expenses and losses of the association.

[1] Doubtful by-laws as to withdrawal are construed against the association; Booz's Appeal, 109 Pa. 592.

Right to Withdraw As Provided by Statute.

§ 113. As has just been stated, the right to withdraw must be authorized by statute. The Act of April 29, 1874, P. L. 73, Sec. 37, Clause 2, provides:

> "Any stockholder wishing to withdraw from the said corporation shall have the power to do so by giving thirty days' notice of his or her intention to withdraw, when he or she shall be entitled to receive the amount paid in by him or her, less all fines and other charges; but after the expiration of one year from the issuing of the series, such stockholder shall be entitled, in addition thereto, to legal interest thereon: Provided, That at no time shall more than one-half of the funds in the treasury of the corporation be applicable to the demands of withdrawing stockholders, without the consent of the board of directors, and that no stockholder shall be entitled to withdraw whose stock is held in pledge for security."

This was amended by the act of April 10, 1879, P. L. 16, Sec. 2, which provides:

> "Stockholders withdrawing voluntarily, shall receive such proportion of the profits of the association or such rate of interest as may be prescribed by the by-laws, any law or usage to the contrary notwithstanding; but payment of the value of stock, so withdrawn, shall only be due when the funds now by law applicable to the demand of withdrawing stockholders are sufficient to meet and liquidate the same, and then only in the order of the respective times of presentation of the notices of such withdrawals, which must have been presented in writing at a previous stated meeting, and have been then and there endorsed as to times of presentation by the officer designated by the by-laws of the association."

This is all the legislation on this important subject. When a by-law fixes the withdrawal value of the stock it cannot be rescinded to the prejudice of a member who has made application to withdraw, and has refrained from making his monthly payments, in the belief that his application has been accepted.[2]

Who May Withdraw.

§ 114. Building associations are democratic institutions and all the members stand upon an equal footing and the rights of one member are the rights of all the members. No preference can or ought to be shown anybody. This is as true of the right to withdraw from the association as of any other privilege, but to be a with-

[2] Eyre vs. Building Association, 17 Leg. Int. 148.

drawing stockholder the member's relationship to the association must be such as to entitle him to its benefits. A defaulting borrower whose stock is pledged to the association as collateral, is not entitled to withdraw and receive the same amount of interest or profit as the member in good standing is entitled to receive.[3] The Act of April 10, 1879, P. L. 16, Sec. 4, does not apply to a borrower in default.[4] All he can claim is the right to appropriate in part payment of his obligation, the actual payments made by way of subscriptions on stock and interest on the loan. It has been frequently held in Pennsylvania that a member who has assigned his stock as security for a loan cannot withdraw,[5] and that notice of withdrawal amounts to nothing as long as the stock is held in pledge,[6] but it seems that this statement should be qualified.[7] If the borrowing stockholder desires to repay his loan and use the withdrawal value as part payment it seems to be good law and good sense to allow him to do so instead of requiring the ridiculous and often impossible procedure of repaying his loan and then withdrawing his stock. What the court evidently means is that he cannot cease to be a member and continue to be a borrower.[7a] A stockholder cannot withdraw after the maturity of the series of stock to which he belongs, or after the association exists only for the purpose of liquidation.[8] If the association has become insolvent [9] or is about to become insolvent a member cannot withdraw nor can there be any appropriation of the value of the stock to the debt,[10] for insolvency dissolves the ordinary contract relations of membership.[11]

[3] Watkins vs. Workingmen's L. & B. Assn., 97 Pa. 514; Folsom Bldg. & Loan Assn. vs. Gogel, 24 Superior 539.

[4] Id.

[5] Wadlinger vs. Washington Ger. B. & L. Assn., 153 Pa. 622.

[6] Watkins vs. Workingmen's L. & B. Assn., 97 Pt. 514.

[7] See Act of April 10, 1879; P. L. 16, Sec. 4; Appendix Section 155.

[7a] This does not apply to a loan on straight bond and mortgage.

[8] Laurel Run Bldg. Assn. vs. Sperring, 106 Pa. 334.

[9] Eaton vs. Eastern Bldg. & Loan Assn., 7 D. R. 440, 11 York 194.

[10] Haspel vs. Lyons, 38 Superior 334.

[11] Strohen vs. Franklin Sav. F. & L. Assn., 115 Pa. 273.

Steps Preliminary to Withdrawal.

§ 115. The by-laws should prescribe the steps necessary to be taken in order to withdraw from the association. They must be reasonable [12] and in conformity with the statutes and they must be complied with in order to perfect the right.[13] Doubtful by-laws as to withdrawal are construed in favor of the member,[14] and a member who has complied with the rules is not affected by a rescission of those rules after he has given notice of withdrawal.[15] The by-laws are generally a mere repetition of the legislative enactment and its terms cannot be materially altered to the prejudice of stockholders. It is proper to adopt the exact words of the statute as a by-law [16] and if contrary to the statute they are void.[17] It is customary to waive the notice required by the by-laws and pay the member on demand. By-laws requiring notice of withdrawal to be given to directors are not complied with by giving notice at a special meeting of the members although every officer and director was present,[18] but where one of the articles of the charter provided, "That any stockholder wishing to withdraw should give one month's notice to the directors," Notice given at the time and place fixed for the meeting was held good, although no quorum was present,[19] and if after giving proper notice the member participates in and votes at the meetings, or continues his stock payments, he waives his right under the notice given.[20]

Funds at Disposal of Withdrawing Members.

§ 116. The Act of April 29, 1874, P. L. 73, Sec. 37, clause 2,[21] contains the proviso, "That at no time shall more than one-half of the funds in the treasury of the cor-

[12] Folk vs. State Capitol Savings Assn., 214 Pa. 529. See page 539.
[13] Booz's Appeal, 109 Pa. 592.
[14] Id.
[15] Eyre vs. Bldg. & Loan Assn., 17 Leg. Int. 148.
[16] Rhoads vc. Hoernerstown Bldg. Assn., 82 Pa. 180.
[17] Id.
[18] William Brown B. & L. Assn.'s Assigned Estate, 12 W. N. C. 207.
[19] Id.
[20] Id.
[21] See Appendix Section 144.

poration be applicable to the demands of withdrawing stockholders, without the consent of the board of directors." This is a necessary and proper restriction in order to prevent a disturbance of the affairs of the association at a time when it would be inconvenient to apply all the money in the treasury to the payment of withdrawals and leave none to loan members or for other purposes. The association cannot unreasonably apply its funds to other purposes and leave none for withdrawing stockholders.[22] Withdrawals must be paid "only in order of the respective times of presentation of the notices of such withdrawals, which must have been presented in writing at a previous stated meeting and been then and there endorsed as to the times of presentation by the officer designated by the by-laws of the association."[23] Withdrawing members cannot be compelled to bid or pay a premium for priority of payment, as this would be inequitable,[24] but a reasonable withdrawal fee may be charged.[25]

Status of Withdrawing Member.

§ 117. The Pennsylvania courts have not been logical in defining the status of a stockholder who has given notice and perfected his right to withdraw. Ordinarily this is of little importance as the stockholders are usually paid on demand, even the notice required by the by-laws being waived, but sometimes situations arise which make it important to define the relationship that exists between the corporation and such a member. To be exact, he is no longer a member nor is he in a proper sense a creditor, but he is called a member for want of a more convenient or proper designation. It was held in a leading case [26]

[22] Second Nat. Loan & Homestead Assn. vs. Hubley, 34 Leg. Int. 6, 24 Pitts. Law. Jour. 50.

[23] Act of April 10, 1879; P. L. 16. See Appendix Section 153.

[24] Rodgers vs. Southwestern Mut. Sav. Fund & Bldg. Assn., 7 W. N. C. 95.

[25] Folk vs. State Capital Sav. Assn., 214 Pa. 529; Conewango Bldg. & Loan Assn., 39 C. C. 91; 21 D. R. 47; opinion of Attorney General Bell.

[26] United States Bldg. Assn. vs. Silverman, 85 Pa. 394; 4 W. N. C. 546; 35 Leg. Int. 51.

decided in 1877 construing the act of April 12, 1859, that when a notice of withdrawal is given, and the time provided by the by-laws has expired, membership ceases and with it all obligations to pay dues. The member becomes a creditor of the association and is entitled to recover judgment [27] as such even though there is no money in the treasury that is or was, since the notice was given, properly applicable according to the statute and by-laws to the claim. In such a case the court may restrain execution on the judgment in order that there may be no undue derangement of the association's affairs.[28] Whether this decision is logical or the conclusion a proper one would be useless to discuss as the Superior Court of Pennsylvania has on two recent occasions[29] when the doctrine of the Silverman case was vigorously assailed and with the acts of 1874[30] and 1879[31] expressly called to its attention refused to overrule or qualify it.

The withdrawing stockholders, however, do not after the time provided for in the by-laws has expired, become creditors for all purposes, and their rights, as against those with whom they have been associated as stockholders, are very different from those of general creditors whose claims are based wholly on outside transactions. In winding up the affairs of an insolvent building and loan association the stockholders who have perfected their rights to withdraw have no right of priority in the distribution of its assets over those who have not. The funds are distributed pro rata, among the stockholders without regard to withdrawal notices.[32] Both classes are equally meri-

[27] When the withdrawal value of the shares is in dispute, a bill in equity will lie to determine their value. Eaton vs. Eastern B. & L. Assn., 7 D. R. 440.

[28] The mere fact that an association has made an assignment for the benefit of its creditors will not prevent a stockholder who has withdrawn and secured an order for the payment of his money from obtaining judgment; Connelly vs. Association, 6 W. N. C. 176. This, however, would not entitle him to preference in distribution. See Section 126.

[29] Lepore vs. Twin Cities Nat. B. & L. Assn., 5 Superior 276; McGovern vs. Cosmopolitan Sav. & Loan Assn., 44 Superior 212.

[30] Act of April 29, 1874; P. L. 73, Sec. 37, Clause 2; Appendix Section 144.

[31] Act of April 10, 1879; P. L. 16, Sec. 2; Appendix Section 153.

[32] Christian's Appeal, 102 Pa. 184.

torious, and in marshalling the assets neither is entitled to priority over the other. The claims of each are based upon their relation to the association as members thereof. Orders issued to withdrawing stockholders are merely evidence of their interests in the assets remaining after paying general creditors.[33] If any of the withdrawing stockholders have been paid by mistake the excess can be recovered back,[34] but holders of stock which has matured who leave the money remain under an agreement that the association will pay interest upon it become creditors and are entitled to preference as such.[35]

Withdrawal Value of Stock.

§ 118. The act of April 10, 1879, P. L. 16, Sec. 2,[36] provides, inter alia, "Stockholders withdrawing voluntarily, shall receive such proportion of the profits of the association or such rate of interest as may be prescribed by the by-laws, any law or usage to the contrary notwithstanding." Borrowers are entitled to the same rate of interest as non-borrowers.[37] It is usual for the by-laws to authorize the board of directors to fix the rate of interest or profits, which is generally done at the beginning of each fiscal year. The rate varies in different associations. Members withdrawing during the first year are seldom given any profits and after that time the rate is graduated, increasing with the age of the stock until it reaches six per cent, which rate is seldom exceeded. The interest is calculated on the total amount of dues paid in, for one-half the time during which they have been paid, commonly called the average time of investment. A by-law which provides that withdrawing stockholders shall receive only the amount paid in less fines and other charges is illegal and void.[38] In the absence of a fixed withdrawal value the member is entitled to the amount paid in as dues and six per cent interest if it is true that the association has

[33] Id.
[34] Kurtz vs. Bubeck, 39 Superior 370.
[35] Com. vs. Lawrence B. & L. Assn., 40 C. C. 65.
[36] See Appendix Section 153.
[37] Winterer vs. Fairmount Bldg. Assn., 19 Phila. 426.
[38] Booz's Appeal, 109 Pa. 592.

earned at least that much and the published statements of the association are evidence of that fact,[39] but a borrower in default is not entitled to any profits.[40] When a borrowing member elects to apply his stock in part repayment of his loan, the proper course is to deduct from the ascertained value of his stock, all arrearages thereon, and credit the balance on the loan.[41]

The "withdrawal value" must not be confused with the "book value." The "withdrawal value" is the amount actually paid in, in addition to such proportion of the profits, or such rate of interest as may be prescribed by the by-laws, less fines and other charges. The "book value" is the proportionate amount of the net assets, including profits [42] or losses,[43] of the association applied to a share of stock, taking into consideration the amount actually paid in and the length of time that the association has had the use of the money. A member is entitled to the "book value" only upon the maturity of his stock.[44]

The act of April 29, 1874, P. L. 73, Sec. 37, clause 2,[45] after providing for the amount to be paid to withdrawing stockholders permits the deduction of "fines and other charges." While the amount to be paid is changed by the act of April 10, 1879, P. L. 16, Sec. 2,[46] the right to deduct fines and other charges still remains, although no mention of this is made in the later act. A member,

[39] Lepore vs. Twin Cities Nat. B. & L. Assn., 5 Superior 276.

[40] Folsom B. & L. Assn. vs. Gogel, 24 Superior 539; Watkins vs. Workingmen's B. & L. Assn., 97 Pa. 514; Wadlinger vs. Washington Ger. Bldg. & Loan Assn., 153 Pa. 622; Johnson vs. Sharon Bldg. Assn., 16 Superior 311.

[41] Building Assn. vs. Rood, 2 Kulp 246.

[42] The word "profits" has a fixed and definite meaning and imports the net amount after deducting any proper expenses incident to the business. * * * The usual, ordinary and correct meaning of the word "profits" is the excess of receipts over expenditures. Lepore vs. Twin Cities Nat. B. & L. Assn., 5 Superior 276.

[43] Every member is liable to contribute in the same proportion as he expects to profit, to the losses and expenses incident to the management of the association. McGrath vs. Hamilton S. & L. Assn., 44 Pa. 383.

[44] This does not take into consideration the contingent fund maintained by some associations. In these associations this fund is not considered an asset or a profit. See ante Sec. 26.

[45] See Appendix Section 144.

[46] See Appendix Section 153.

therefore, cannot withdraw without bearing his share of losses sustained,[47] or a probable loss, and a prospective loss by reason of pending foreclosures or estimated depreciation of real estate may be liquidated by the association even before the loss has been fully determined, and deducted from the withdrawal claim.[48] This is equitable and just, as the right of withdrawal is not conferred upon a member for the purpose of enabling him to escape his just proportionate responsibility for losses incurred, but for the purpose of securing to each member the privilege of withdrawing his proportionate share of the accumulated funds. The association must, however, show losses in order to charge a withdrawing member,[49] but judgment on a withdrawal claim will be delayed in order to allow the association to ascertain its losses.[50] If the withdrawal value is in dispute a bill in equity will lie to determine it,[51] but a withdrawing stockholder is not entitled to an accounting.[52] It seems that a member is not liable to pay his share of losses resulting from bad investments made after he has given notice to withdraw.[53] Payment of withdrawal must be made in cash and the member cannot be compelled to take assets of the association.[54] The association has also the right to charge a withdrawal fee, provided it is a reasonable one, fairly approximating the proportion of expense which upon the most accurate practical calculation would appear chargeable against each share at the date of withdrawal,[55] and a by-law permitting a deduction of one dollar per share from the amount due is legal and this is not altered by the act of June 12, 1907, P. L. 525.[56]

[47] Christian's Appeal, 102 Pa. 184.

[48] Knoblauch vs. Robert Blum B. & L. Assn. No. 2, 8 Pittsburg Leg. Jour. (N. S.) 39.

[49] National Bldg. Assn. vs. Hottenstein, 10 Pittsburg Leg. Jour. (N. S.) 225, 2 Law Times (N. S.) 99.

[50] Wittman vs. Concordia Bldg. Assn., 7 W. N. C. 80; 13 Phila. 95; 36 L. I. 72.

[51] Eaton vs. Eastern B. & L. Assn., 7 D. R. 440.

[52] Watkins vs. Workingmen's B. & L. Assn., 97 Pa. 514.

[53] Christian's Appeal, 102 Pa. 184.

[54] Mercer vs. Amber B. & L. Assn., 10 C. C. 51, 2 Lack. Jur. 123.

[55] Folk vs. State Capital Sav. Assn., 214 Pa. 529. See Page 540.

[56] Conewango Bldg. & Loan Assn., 39 C. C. 91; 21 D. R. 47. Opinion of Attorney-General Bell.

Involuntary Withdrawals.

§ 119. The over-accumulation of money is guarded against by the act of April 10, 1879, P. L. 16, Sec. 3, which provides:

"The by-laws may provide for the involuntary withdrawal and cancellation at or before maturity of shares of stock not borrowed on; Provided, That such withdrawal and cancellation shall be pro rata among the shares of the same series of stock; And provided further, That not less than legal interest shall be credited and allowed to each share so withdrawn and cancelled."

This section of the Act has never been judicially construed. This is perhaps because its provisions are clearly set forth and also because involuntary withdrawals are seldom forced upon members. There is injustice in compelling a member to withdraw and the power should never be resorted to unless every other proper means of investing the money, even at a low rate of interest, has failed.

CHAPTER XVI.

BORROWING MONEY.

Power to Borrow Money.

§ 120. It was held in Stiles's Appeal, 95 Pa., 122, that it would be a gross perversion of the whole spirit and design of a building and loan association to borrow money from banks or others for the purpose of loaning it to members. Why this was not one of their implied powers necessary to carry out the purpose of their creation it is difficult to understand, but a discussion along these lines would be merely academic, as the law has been changed by legislation.

The Act of June 2, 1891, P. L. 174, Sec. 1, provided:

"That in addition to the corporate powers conferred on building and loan associations by the thirty-seventh section of the Act of twenty-ninth of April, one thousand eight hundred and seventy-four, they shall have the right, when applications for loans by the stockholders thereof shall exceed the accumulations in the treasury, to make temporary loans of such sum or sums of money to meet such demands, not exceeding in the aggregate of such loan at any time fifteen thousand dollars ($15,000), at a less rate of interest than six per centum, and secure the payment of the same by note, bond or assignment of its judgments and mortgages as collateral; said loans to be repaid out of the accumulations in the treasury, as soon as sufficient is paid in and there is no demand therefor by borrowing stockholders."

This act was amended by the Act of June 25, 1895, P. L. 303, Sec. 1, as follows:

"That in addition to the corporate powers conferred on building and loan associations by the thirty-seventh sec-

tion of the Act of twenty-ninth of April, one thousand eight hundred and seventy-four, they shall have the right, when a series of stock has matured, or when applications for loans by the stockholders thereof shall exceed the accumulations in the treasury, to make temporary loans of such sum or sums of money to meet such demands, not exceeding in the aggregate of such loans at any one time twenty-five per centum of the withdrawal value of the stock issued by said association at a rate of interest less than six per centum, and secure the payment of the same by interest bearing order, note or bond as collateral; said loans to be repaid out of the accumulations in the treasury as soon as sufficient is paid in and there is no demand therefor by borrowing stockholders."

This legislation conferred upon building and loan associations a necessary power to meet, at all times, the demands for money by the members under proper restrictions.[1] It is a useful and valuable right, as it enables an association to meet the demands of its members for money when borrowers are plentiful and to repay when they are few. Over-drawing a bank account is construed to be borrowing money, but the acceptance of prepayments on stock is not.[2]

Borrowing Money From Other Building and Loan Associations.

§120[a]. It was formerly illegal for one association to loan money to another association. This was not on account of lack of power to borrow but because an association had no right to make a straight loan.[a] This was remedied by the Act of May 14, 1913, as follows:—

"Sec. 2. When there are moneys ramaining in the treasury of any mutual savings fund or building and loan association unapplied for by any of its stockholders and not required to pay withdrawals and matured stock and borrowed

[1] Heptasoph B. & L. Assn., etc., vs. Linhart, 4 D. R. 620; 43 P. L. J. 94.

[2] Folk vs. State Capital S. & L. Assn., 214 Pa. 529, see page 535.

[a] By a straight loan is meant an ordinary loan in contradistinction to a building and loan association loan on shares.

money, if any, it shall be lawful for the board of directors to make temporary loan of such moneys to other mutual savings fund or building and loan associations on interest bearing order, note or bond; Provided that such order, note or bond shall not bear a higher rate of interest than the lawful rate; Provided further that the board of directors of any mutual savings fund or building and loan association shall not loan to any other one mutual savings fund or building and loan association more than ten per centum of its assets and not more than twenty-five per centum of its assets in the aggregate may be so loaned." [b]

Security for Borrowed Money.

§ 121. The association may secure the payment of its loan to the lender by interest bearing order, note or bond as collateral, but it cannot use its mortgages[3] or judgments as collateral for money borrowed.[4] The Act of 1895 seems to prohibit this by implication. There are good reasons, however, why this should not be allowed. The member whose mortgage is assigned by the association to secure its loan may under certain circumstances be placed in a less favorable position than the member whose security is not assigned, as his duties and obligations to the assignee would be different from his duties and obligations to the association. The relation between the association and the borrowing member is a personal one, which would be destroyed by the assignment.

Borrowing in Excess of Amount Authorizing by Law

§ 122. If an association borrows money in excess of the amount authorized by law, that is, in excess of twenty-five per cent of the withdrawal value of its stock, it cannot escape liability for it on the plea that it has no authority to borrow the money. By making the loan it represented to the public that its withdrawal value was sufficient to

[b] See Appendix Section 183.

[3] Under the Act of June 2, 1891, P. L. 174, this was permissible.

[4] B. & L. Assn. mtgs. 14 D. R. 879.

authorize the loan.[5] It would be estopped from denying its authority after the loan was made and the money paid. It cannot keep the money and deny its liability on a plea of *ultra vires*.[6] If a stockholder or other interested party would interfere before the loan was made the court would enjoin the officers from negotiating it, or the use of the money if it had been received.[7] Even the directors or the president cannot be deprived of their rights as creditors because the association borrowed beyond its legal capacity, if the money actually went into the association,[8] nor could they be charged with loss upon real estate, where the borrowed money did not occasion the loss;[9] but a claim of the president for money advanced will be postponed to the claims of general creditors and stockholders, if his negligence in the conduct of the business contributed to the insolvency of the association,[10] or the directors' claims may be postponed to those of other creditors, but not those of members.[11] Where an association by a contract *ultra vires* purchases lands and gives its notes and bonds for the purchase money a judgment will be restricted to the land.[12] If an association receives deposits from members or non-members, although it has no authority to receive same, in case of insolvency they are entitled to share pro rata with outside creditors in preference to stockholders.[13]

[5] Fidelity Co. vs. West Penn, etc., Railroad Co., 138 Pa. 494.
[6] Id.
[7] Id.
[8] Com. vs. Anchor B. & L. Assn., 20 Superior 101.
[9] Eaton et al. vs. Eastern B. & L. Assn., 7 D. R. 440.
[10] Com. vs. Mechanics, etc., B. & Assn., 2 Dauphin 228.
[11] In re York B. & L. Assn., 16 York 137.
[12] Faulkner's Appeal, 11 W. N. C. 48.
[13] Appeal of Criswell, 100 Pa. 488.

CHAPTER XVII
INSOLVENCY

Causes of Insolvency.

§ 123. The insolvency of a building and loan association is unpleasant to contemplate or to write about. Fortunately, instances of insolvency have been few and the losses in comparison with other business or bank failures have been slight. When a bank fails it is taken as a matter of course and results in no serious disturbance in the business of other banks. People still have full faith and confidence in and entrust their savings or capital to other banks, but the insolvency of a building and loan association is a reflection on all associations and becomes a family and local tradition. But the fact remains that building and loan associations afford a security which is practically absolute, for only culpable carelessness or downright dishonesty can impair their solvency, and this no human law or supervision can absolutely guard against.

No business, of course, can be conducted without some loss; but the losses incurred by the occasional bad loan taken by an association impairs only the profits in a slight degree and seldom brings about the actual insolvency of the institution.

When an Association is Insolvent.

§ 124. The insolvency of a building and loan association is a condition not contemplated by the laws governing them. In the ordinary meaning of the word such a condition is practically impossible, and a case where there were not sufficient assets to pay the creditors, exclusive of stock-

holders, has never arisen in Pennsylvania, and is still less likely now than it ever was on account of the supervision by the state banking department.[1] But while corporations generally are held to be insolvent when the assets are insufficient to pay its creditors, exclusive of stock subscriptions, building associations are in a class by themselves, and are said to be insolvent when they cannot, besides paying their general creditors,[2] pay back to their stockholders the amount of their contributions, dollar for dollar.[3] This is partly on account of the theory that an association is in fact and in law a partnership with corporate rights in which every stockholder is a member.[4] In determining whether or not an association is solvent or insolvent the courts will not attempt to marshal the assets and liabilities item by item, and will not consider the case from a mere bookkeeping point of view, but from a sound business point of view, and will be guided by what action will best conserve the interests of the parties and of the public.[5] Unpaid dues are a very doubtful asset.[6]

Proceedings in Case of Insolvency.

§ 125. The insolvency of an association does not of itself dissolve it.[7] It has been held that the proper method of proceeding against an insolvent association is by a bill in equity for the appointment of a receiver;[8] but in view of later legislation it would seem that a better method would be a proceeding by the state bank examiner by

[1] Act of Feb. 11, 1895, P. L. 4.

[2] If there were not enough assets to pay the general creditors in full, the stockholders, no doubt, would under the law be liable for the difference between the amount actually paid in and the par value of their stock in order to pay the general creditors in full, because whether paid or unpaid, the capital stock of a corporation constitutes a trust fund for the general creditors. See United States Brick Co. vs. Middletown Shale Brick Co., 228 Pa. 81, and the cases there cited.

[3] Kurtz vs. Bubeck, 39 Superior 370. See Page 379.

[4] In re Nat. Sav. & Loan Assn., 9 W. N. C. 79, Christian's Appeal, 102 Pa. 184.

[5] Com. vs. Pa. B. & L. Assn., 20 C. C. 589.

[6] Id.

[7] Gormerly vs. Port Richmond B. & L. Assn., 3 W. N. C. 11.

[8] In re Assigned Estate of Nat. Sav. Loan & Bldg. Assn., 9 W. N. C. 79.

virtue of the authority given him by the Act of February 11, 1895, P. L. 4, or an assignment for the benefit of its creditors[9] under the Act of June 4, 1901, P. L. 404.

The Federal bankruptcy law does not apply to building and loan associations. Being corporations, they cannot become voluntary bankrupts; and not being engaged in manufacturing, trading, printing, publishing, mining or mercantile pursuits, they cannot be adjudged involuntary bankrupts.[10] It seems that a general creditor cannot ask for the appointment of a receiver unless he can show, what is said to be almost impossible, "that the assets are insufficient to pay the general creditors." He has an action at law, and if he obtains judgment his debt can be collected; but a shareholder whose stock is worth less than the amount actually paid in can obtain the appointment of a receiver, for his obligation has been impaired.[11]

Distribution of Assets of an Insolvent Association.

§ 126. In considering the distribution of the assets of an insolvent building and loan association it is necessary to bear in mind the peculiar relationship that exists between the shareholders. They are not only shareholders in a body corporate, but they are in a certain sense co-partners, and the law will not allow any of them to obtain an undue advantage or manoeuvre into a position of preference over the other stockholders. Insolvency fixes the status of all creditors, and in distribution those who have severed their connection by notice of withdrawal or who have obtained judgment are entitled to no preference over those who have not. The test in determining the status of a claim is not its condition at the time a receiver is appointed, or an assignment for the benefit of creditors made, but out of what relationship to the corporation did the claim arise.[12] If it was that of a general creditor it is entitled to preference, but if it arose out of the relation of membership it is not, and a withdrawing stockholder

[9] Christian's Appeal, 102 Pa. 184.
[10] Kurtz vs. Bubeck, 39 Superior 370. See Page 380.
[11] Gormerly vs. Port Richmond B. & L. Assn., 3 W. N. C. 11.
[12] This statement should be qualified. See next succeeding section.

is entitled to no preference over those who have not given notice of withdrawal. While in a qualified sense withdrawing stockholders may be considered creditors of the association, their rights, as against those with whom they have been associated, are very different from those whose claims are based wholly on outside transactions.[13] After the expenses incident to the administration of its assets are deducted, the general creditors, if any, should be paid in full, and the residue of the fund should be distributed pro rata among those whose claims are based upon stock of the association, whether they have withdrawn and held orders for the withdrawal value thereof or not. Both claims are equally meritorious, and in marshalling the assets neither is entitled to priority over the other. The claims of each are alike based upon their relation to the association as members thereof.[14] Even the overpayments to those who have already received their money either as withdrawing stockholders or the holders of matured stock may be recovered back,[15] and the satisfaction of a mortgage entered on the record will be stricken off.[16] In the distribution of assets of an insolvent association borrowers and non-borrowers are to be treated as far as possible alike, and care is to be taken to adjust their burdens equally and not to throw upon either more than their just share.[17]

When Withdrawing or Matured Shareholders Are Entitled to Preference.

§ 127. The statement made in the preceding paragraph should be qualified to this extent, that withdrawing stockholders or the holders of matured stock who have left

[13] Christian's Appeal, 102 Pa. 184.

[14] Id.

[15] Kurtz vs. Bubeck, 39 Superior 370. The recovery can be had by a bill in equity against all the stockholders of each series. Assumpsit will not lie against a single stockholder to recover alleged overpayments made in settlement for his stock, it being impossible thereby to work out the equities of all the stockholders. Armstrong, Trustee, vs. Long, 21 D. R. 511.

[16] Callahan's Appeal, 124 Pa. 138.

[17] Com. vs. Globe Mutual B. & L. Assn., 30 C. C. 98; 13 D. R. 477.

their money remain on deposit are entitled to preference if at the time of giving the withdrawal notice or at the maturity of the stock the association was actually solvent. They should not be required to share losses resulting from bad investments made after they withdrew from the association as active members thereof.[18] They thereby cease to be members and become general creditors,[19] but the burden is upon them of showing clearly and affirmatively all the facts necessary to entitle them to priority, and an essential fact is the solvency of the association at the time their rights accrued. In the absence of such proof, they are entitled to participate only pro rata with the other shareholders.[20]

Effect of Insolvency.

§ 128. The insolvency of an association stops at once any liability for further regular stock payments, and this applies whether such members be merely investors or also borrowers. The liability to pay monthly dues or fines or premiums cannot extend beyond the life of the association. The receiver has no power or authority to carry on the business of a building and loan association. Insolvency ends all contracts between the association and its members, and nothing remains but to wind it up in such a manner as to do equity to creditors and between members themselves. As regards the latter, care should be taken to adjust the burdens equally and not to throw upon either borrowers or non-borrowers more than their respective share.[21] The loan contract is to be treated as rescinded and the parties put as nearly as possible in their former position, therefore the borrower is required to pay his indebtedness immediately and is not entitled to insist upon the mode of payment by maturing his stock through small periodical payments and ultimately setting off its matured value against his indebtedness for which he contracted.[22]

[18] Christian's Appeal, 102 Pa. 184.

[19] Com. vs. Lawrence B. & L. Assn., 40 C. C. 65.

[20] Com. vs. Eastern Union B. & L. Society, 38 C. C. 325.

[21] Strohen vs. Franklin Sav. & L. Assn., 115 Pa. 273.

[22] Com. vs. Globe B. & L. Assn., 30 C. C. 98.

Amount Due by Borrower Upon Insolvency.

§ 129. If the borrower has made a direct appropriation of payments on the stock to the extinguishment of his obligation before actual insolvency or the intervention of other rights, the installments paid upon the stock are taken as paid upon the loan,[23] and all he can be required to pay is the balance due with interest.[24] The burden, however, of proving such an appropriation is upon the debtor.[25] The courts in recent cases seem to consider no writing an appropriation if there is any way of avoiding it.[26] In the absence of such an appropriation in settling with an insolvent association a borrowing stockholder should be required to repay what he actually received, with interest. He will then be entitled, after the debts of the corporation are paid, to a pro rata dividend with the non-borrowing stockholder for what he has paid upon his stock.[27] In entering a judgment against a borrower in such a case damages should be assessed by charging the defendant with the sum actually received, with interest, and crediting him with all actual payments except payments on stock.[28] It will be noted that in stating the above propositions stress is laid upon the fact that the borrower need only repay the amount *actually* received; this is because that part of the obligation which represents premium cannot be collected;[29] and if the premium has been paid in instalments, he is entitled to credit for the amount so paid. The payment of a premium was in consideration of the right to repay his loan by maturing his stock through small periodical payments and ultimately setting off its matured value against his indebtedness. This contract was broken by the association, as he is required to repay his indebtedness at once and he should not be obliged to pay for what

[23] Hemperley vs. Tyson et al., 170 Pa. 385; York Trust Co. vs. Gallatin, 186 Pa. 150; Stoddart vs. Myers, 52 Superior 179.

[24] See ante section 82.

[25] Freemansburg B. & L. Assn. vs. Watts, 199 Pa. 221.

[26] Leechburg B. & L. Assn. vs. Kinter, 233 Pa. 354; Haspel vs. Lyons, 38 Superior 334. But see contra Stoddart vs. Myers, 52 Superior 179.

[27] Strohen vs. Franklin Savings Fund & Loan Assn., 115 Pa. 273.

[28] Id; Leechburg B. & L. Assn. vs. Kinter, 233 Pa. 354.

[29] State Saving and Loan Assn. vs. Carroll, 4 Dist. 6.

the other contracting party cannot carry out.[30] The borrower is not entitled to have the premiums credited on the loan as of the time of payment, thereby reducing the loan or amount due as of those dates respectively, thereby reducing the amount of interest payable as of those dates; nor is he entitled to interest on those payments as of the date of their payment, as the parties never considered the payments as payments on the loan.[31] He cannot in an action upon the obligation set off damages sustained by reason of the suspension of business by the association.[32]

Reorganization After Insolvency.

§ 130. In a proper case an association may reorganize after insolvency. This can only be done with the consent of the shareholders, but it need not be unanimous. Any proper and equitable method would, no doubt, be approved by the Courts. It can be done by reducing the value of the stock of assenting stockholders a sufficient percentage to put the association on a solvent basis and paying to non-assenting stockholders the actual value of their stock. Of course, no plan of reorganization would be feasible if the percentage of non-assenting stockholders was very large, but the advantage of reorganization over a receivership should commend itself to all stockholders, especially where nothing appears to indicate that the manner of conducting the business was improper or contrary to public interest, the losses being occasioned by a defalcation of a trusted officer.[33]

[30] Com. vs. Globe Mut. B. & L. Assn., 30 C. C. 98.

[31] Roeser vs. German Nat. B. & L. Assn., 32 Superior 100.

[32] Johnston vs. Elizabeth B. & L. Assn., 104 Pa. 394.

[33] Com. vs. Industrial B. & L. Assn. of Pittsburg and Com. vs. The Cash B. & L. Assn. of Pittsburg, 10 D. R. 263; 25 C. C. 11. These two cases were considered together and are the only recorded ones of a reorganization after insolvency.

CHAPTER XVIII
BY-LAWS.

Definition.

§ 131. A by-law is a rule or law adopted by an association for the regulation of its own actions and concerns and the rights and duties of its members among themselves. The name "by-law" is not always used, as it is sometimes called "constitution." The "by-law" or "constitution" must not be confused with the "charter." The charter is granted by the "Commonwealth" and no by-law made by the association may be inconsistent with it. Again a "by-law" must not be confused with a "resolution." A resolution is generally adopted by the members or directors under authority given by the by-laws to govern special and individual cases and, of course, must not conflict with the by-laws.[a] In the appendix to this volume is published a set of by-laws, similar to some in general use, with such additions and alterations as experience seems to require.

Importance of By-Laws.

§ 132. Too much stress cannot be laid upon the importance of a proper set of by-laws. Much of the litigation in which building and loan associations have been involved and many losses which have occurred have been occasioned by illegal, ambiguous or obsolete by-laws. Specific instances could be cited where it has resulted in actual insolvency. Associations go on year after year working under old by-laws and pay no attention to the changes that legislation and judicial interpretation have made. Often

a. Much of what can or ought to be said concerning by-laws of building and loan associations has already been said in previous chapters, dealing with particular subjects and need not be repeated. The only attempt here made is to give a general view of the subject in a way that was not possible under individual subjects.

the by-laws of new associations are either carelessly drawn or drawn by incompetent persons. Sometimes the by-laws of other associations are adopted as a whole, with all their errors and mistakes. Usually nothing is attempted to be done until there is trouble, and then it is too late. The by-laws under which the business is conducted are almost as important as the security taken for loans.

Power to Make By-Laws.

§ 133. The Act of April 29, 1874, P. L. 73, Sec. 1, Par. 6, gives to all corporations the power "To make by-laws not inconsistent with law for the management of its property, the regulation of its affairs and the transfer of its stock." The right to make reasonable by-laws consistent with its charter, and not inconsistent with the constitution or laws of the state or of the United States, and to alter, amend, suspend or repeal the same, provided that in exercising the latter power vested rights are not interfered with, inheres in every corporation, and is to be exercised by the stockholders at large at a general meeting of the corporation and in the absence of charter authority[1] cannot be exclusively exercised by the Board of Directors.[2]

Authority of the By-Laws.

§ 134. The Act of May 14, 1891, P. L. 61, amending the Act of April 29, 1874, P. L. 73, provides: "The by-laws of every corporation created under the provisions of this statute, or accepting the same, shall be deemed and taken to be its law subordinate to this statute, the charter of the same, the constitution and the laws of this commonwealth, and the Constitution of the United States." Therefore, every member of a building and loan association is bound by and his relations with the association, and his fellow members are governed by the by-laws unless the by-law is illegal,[3] or violates the association's charter[4] or is unreason-

[1] This authority is impossible in a building and loan association.

[2] Alters vs. Bricklayers, etc., Assn., 19 Superior 272.

[3] Stiles's Appeal, 95 Pa. 122.

[4] Rogers vs. Building Assn., 7 W. N. C., 95.

able,[5] or if it is an amendment it prejudices vested rights.[6] The by-laws of a corporation, upon their adoption, become written into the charter, and put parties who deal with the corporation upon notice, in trading with officers of the corporation, as to the extent of the power and agency of such officer, and this whether the specific by-law has been brought home to them or not,[7] but the authority of an officer or agent of a corporation, although distinctly designated by the by-laws, may be ascertained to be different, from circumstances covering a period of time long enough to manifest a course of dealing, provided such circumstances are known also to and acquiesced in by the board of directors, and if the course of dealing is one the board has power to authorize.[8]

Uniformity of By-Laws.

§ 135. The by-laws of most associations are similar in their provisions. This is fortunate, as it aids the public in understanding the methods, purposes and aims of associations and the obligations and responsibilities assumed by becoming a member. The by-laws are usually printed in the member's receipt or pass book.

[5] Com. vs. Knorr, 40 C. C. 325.
[6] Eyre vs. Building Assn., 17 Leg. int. 148.
[7] Worthington vs. Railway Co., 195 Pa. 211.
[8] Louchheim vs. Somerset B. & L. Assn., 211 Pa. 499. See Sec. 79.

CHAPTER XIX

TAXATION.

Reasons Why Building and Loan Associations Should Be Exempt From Taxation.

§ 136. A tax is a charge and pecuniary burden for the support of government,[1] for raising revenue for public purposes in which the community that pays it has an interest.[2] The right to impose taxes is an indispensable attribute of the sovereign power and is as old as the government itself, as also is the power to exempt certain persons or property from general taxation. The legislature of this state is limited only by the constitution in its power to tax or exempt persons, corporations or property.[3] The purpose of exemption is to encourage and help those who cannot or ought not pay a tax, or to promote an institution from which the community and the state receives other benefits, to encourage which the state foregoes its right to tax. This last reason applies to building and loan associations. They have done and are doing more than any other institution to encourage thrift, economy and industry among the people. They have enabled thousands to purchase and own their own homes, and the influence of home owning upon the citizenship and civic virtue of the people is incalculable. Another reason is the fact that their funds consist of large aggregations of small investments by those who can ill afford to bear the burden of taxation. The legislature wisely relieves them of this burden and places it where it more properly belongs. Still this exemption has

[1] Emaus Borough vs. Emaus School Dist., 12 C. C. 349; 2 D. R. 322.
[2] Sharpless vs. Philadelphia, 21 Pa. 147.
[3] Com. vs. Germania Brewing Co., 145 Pa. 83.

been maintained only by hard fighting, and the credit for it is almost entirely due to the Building Association League of Pennsylvania.

Statute Exempting Associations.

§ 137. The Act of April 10, 1879, P. L. 18, relieved building and loan associations from taxation. The fourth section of the Act of June 7, 1879, P. L. 112, imposed a capital tax on all corporations, except foreign insurance companies, banks and saving institutions. This was held to repeal the Act of April 10th; and as building associations were not within the exempt class mentioned in the later act, they were held liable to taxation.[4] This evidently was not the intention of the legislature, for at the following session another act was passed relieving them of all taxation except taxes on real estate. This was the Act of May 22, 1883, P. L. 38, Sec. 1, as follows:

"Mutual loan and building associations shall be exempt from the provisions of each and every law imposing taxes for state purposes on their capital stock or mortgages, and other securities for moneys loaned to their own members; but the real estate owned by said association shall be subject to the same rates of taxation as the real estate of other corporations and persons: Provided, however, That the right of the Commonwealth to collect taxes already accrued is hereby reserved."

In all subsequent acts imposing taxes on corporations building and loan associations have been exempted except in a few and unimportant instances, which will be cited.

Taxation Upon Straight Mortgages.

§ 138. The question will naturally arise whether straight mortgages authorized by the act of May 14, 1913, No. 144, when taken by associations will subject them to taxation. It seems that under the Act of May 22, 1883, P. L. 38, this class of security is within the exemption. The act last cited exempts from taxation, "mortgages and other securities for moneys loaned *to their own members,*"

[4] Bourguignon Bldg. Assn. vs. Com., 98 Pa. 54.

and the act authorizing straight mortgages defines them as loans to members. If the legislature had intended to impose a tax on these mortgages it would have and should have used apt words that would have left no doubt as to its intention. Further, the act is as the title says, "An act enlarging the powers of mutual savings fund or building and loan associations," and not an act restricting their usefulness by imposing burdens upon them.

Exemption From Paying Bank Examiners' Fees.

§ 139. The Act of February 11, 1895, P. L. 4, created a banking department and expressly placed building and loan associations under its supervision and control, but exempted them from paying the fees to help pay the expenses of that department, as provided for in the act. The exempting clause is at the end of section four, as follows: "Provided, however, That nothing herein contained shall impose upon Building and Loan Associations, doing business exclusively within this state, the payment of any sum or sums of money whatsoever." Associations are "doing business exclusively within the state," although subscribers to stock have removed from the state, but continue to pay their dues, or although subscribers after removal assign their stock to non-residents, or although non-residents subscribe for stock without solicitation:[5] but associations which make investments upon real estate in other states are not doing business exclusively within the state and are liable for the fees.[6] The stock of such an association should be valued at the amount actually paid in for the purpose of fixing the fee and not the amount of the matured value.[7]

Tax on Full Paid, Prepaid and Fully Matured or Partly Matured Stock.

§ 140. The Act of June 22, 1897, P. L. 178, Sec. 1, provides as follows:

"That upon all full paid, prepaid and fully matured or partly matured stock in any building and loan associa-

[5] Building Association Banking Fees, 17 C. C. 62; 4 D. R. 629.
[6] Id.
[7] Id.

tion incorporated under the laws of this State, or incorporated under the laws of any other state and doing business within this state, and upon which annual, semi-annual, quarterly or monthly cash dividends or interest shall be paid, there shall be paid a state tax equal to that required to be paid upon money at interest by the general tax laws of this state; and such tax shall be deducted from the cash dividend or interest so provided for by the Secretary or Treasurer of such corporation, and be paid to the State Treasurer. And every such domestic corporation shall annually make return to the Auditor General, at the time other returns for taxation are required to be made, of the amount of its stock outstanding entitled to receive cash dividends or interest, and every such foreign corporation shall, in reports required to be made by them to the Banking Department, make report of the amount of its stock held by residents of this state entitled to receive cash dividends or interest, and said Banking Department shall, at the time other returns for taxation are required to be made, certify to the Auditor General the amount of such stock each of said foreign corporations had outstanding at the time of its last report to the said Banking Department; and upon said sum such foreign corporations shall pay the tax above required to be paid to the State Treasurer upon demand, and failure to make such payment within thirty days after such demand shall have been made shall subject such corporation to the forfeiture of its right to transact business in this state: Provided, however, That nothing in this act shall be taken to require the payment of any tax upon any unmatured stock of building and loan associations upon which periodical payments are required to be made, or upon any such stock after it has matured and is in process of payment."

Under this act associations are required to pay a state tax upon instalment stock which has matured, but which for various reasons has not been paid and upon which the association pays interest. The distinguishing feature that makes the association liable is the payment of interest or dividends.

Amount of Tax.

§ 141. Whenever a tax is settled or assessed against a building and loan association, it is four mills per dollar upon the amount subject to taxation ascertained by the return as made or certified to the Auditor General, and can only be assessed on the stock outstanding at the time of the report.

Federal Taxation.

§ 142. The Federal act of August 5, 1909, Section 38, imposing a special excise tax on corporations exempts from its requirements "domestic building and loan associations organized and operated exclusively for the mutual benefit of their members." Fortunately, nearly all the associations in Pennsylvania are included in this exemption. As a general statement, it may be said that associations exempt under the state laws are also exempt under the Federal law, as the tests as to the right to exemption are practically the same.

[10] State Taxation of Building Assn., 20 C. C. 545; 7 D. R. 121.
[11] Id.

Appendix

Statutes of the Commonwealth of Pennsylvania relating to Building and Loan Associations.

Act of April 29, 1874, Sec. 37, P. L. 73.

§ 142. Building and loan associations incorporated under the provisions of this act, shall have the powers, and from the date of the letters patent creating the same, when not otherwise provided in this act, be governed, managed and controlled as follows:

§ 143. I. They shall have the power and franchise of loaning or advancing to the stockholders thereof the moneys accumulated from time to time, and the power and right to secure the repayment of such moneys, and the performance of the other conditions upon which the loans are to be made, by bond and mortgage or other security, as well as the power and right to purchase or erect houses, and to sell, convey, lease or mortgage the same at pleasure to their stockholders or others for the benefit of their stockholders, in such manner, also, that the premiums taken by the said associations for the preference or priority of such loans shall not be deemed usurious, and so, also, that in case of non-payment of instalments, premiums or interest by borrowing stockholders, for six months, payment of principal, premiums and interest, without deducting the premium paid, or interest thereon, may be enforced by proceeding on their securities according to law.

§ 144. II. The capital stock of any corporation created for such purposes, by virtue of this act, shall at no time consist in the aggregate of more than one million dollars, to be divided into shares of such denomination, not exceeding five hundred dollars each, and in such number as the corporators may, in the application for their charter, specify: *Provided,* That the capital stock may be issued in series, but no such series shall at any issue exceed in the aggregate five hundred thousand dollars, the instalments on which stock are to be paid at such time and place as the by-laws shall appoint; no periodical payment of such instalments to be made exceeding two dollars on each share, and said stock may be paid off and retired as the by-laws shall direct; every share of stock shall be subject to a lien for the payment of unpaid instalments and other charges incurred thereon under the provisions of the charter and by-laws, and the by-laws may prescribe the form and manner of enforcing such lien; new shares of stock may be issued in lieu of the shares withdrawn or forfeited; the stock may be isued in one or in successive series, in such amount as the board of directors or the stockholders may determine; and any stockholder wishing to withdraw from the said corporation, shall have the power to do so by giving thirty days' notice of his or her intention to withdraw, when he or she shall be entitled to receive the amount paid in by him or her, less all fines and other charges; but after the expiration of one year from the issuing of the series, such stockholder shall be entitled, in addition thereto, to legal interest thereon: *Pro-*

vided, That at no time shall more than one-half of the funds in the treasury of the corporation be applicable to the demands of withdrawing stockholders without the consent of the board of directors, and that no stockholder shall be entitled to withdraw, whose stock is held in pledge for security. Upon the death of a stockholder, his or her legal representatives shall be entitled to receive the full amount paid in by him or her and legal interest thereon, first deducting all charges that may be due on the stock; no fines shall be charged to a deceased member's account, from and after his or her decease, unless the legal representatives of such decedent assume the future payments on the stock.

§ 145. III. The number, titles, functions and compensation of the officers of any such corporation, their terms of office, the times of their elections, as well as the qualifications of electors, and the ratio and manner of voting, and the periodical meetings of the said corporation, shall be determined by the by-laws, when not provided by this act.

§ 146. IV. The said officers shall hold stated meetings, at which the money in the treasury, if over the amount fixed by charter as the full value of a share, shall be offered for loan, in open meeting, and the stockholder who shall bid the highest premium for the preference or priority of loan, shall be entitled to receive a loan of not more than the amount fixed by charter as the full value of a share, for each share of stock held by such stockholder: *Provided,* That a stockholder may borrow such fractional part of the amount fixed by charter as the full value of a share as the by-laws may provide; good and ample security, as prescribed by the by-laws of the corporation, shall be given by the borrower to secure the repayment of the loan; in case the borrower shall neglect to offer security, or shall offer security that is not approved by the board of directors, by such time as the by-laws may prescribe, he or she shall be charged with legal interest, together with any expenses incurred, and the loss in premium, if any, on a resale, and the money may be resold at the next stated meeting; in case of non-payment of instalments or interest by borrowing stockholders, for the space of six months, payment of principal and interest, without deducting the premium paid or interest thereon, may be enforced by proceeding on their securities according to law.

Clause five of this act is repealed and superseded by the act of April 10, 1879, *P. L.* 16, *Sec.* 4.

§ 147. VI. No premiums, fines, or interest on such premiums, that may accrue to the said corporation, according to the provisions of this act, shall be deemed usurious and the same may be collected as debts of like amount are now by law collected in this Commonwealth.

§ 148. VII. No corporation or association created under this act shall cease or expire from neglect on the part of the corporators to elect officers at the time mentioned in their charter or by-laws, and all officers elected by such corporation shall hold their officers until their successors are duly elected.

§ 149. VIII. Any loan or building association incorporated by or under this act, is hereby authorized and empowered to purchase at any sheriff's or other judicial sale, or at any other sale, public or private, any real estate, upon which such association may have or hold any mortgage, judgment, lien or other incumbrance, or ground rent, or in which said association may have an interest, and the real estate so purchased, or any other that such association may hold or be entitled to at the passage of this act, to sell, convey, lease or mortgage at pleasure, to any person or persons whatsoever; and all sales of real estate heretofore made by such associations to any person or persons not members of the association so selling, are hereby confirmed and made valid.

§ 150. IX. All such corporations shall have full power to purchase lands and to sell and convey the same, or any part thereof, to their stockholders or others in fee simple, with or without the reservation of ground rents, but the quantity of land purchased by any one of said associations hereafter incorporated, shall not, in the whole, exceed fifty acres, and in all cases the lands shall be disposed of within ten years from the date of the incorporation of such associations respectively.

§ 151. X. All land and building associations are hereby authorized to make sale of, and assign or extinguish, to any person or persons, the ground rents created as aforesaid.

Act of April 10, 1879, P. L. 16. Relating to mutual saving fund, building and loan associations, regulating the mode of charging premiums, bonus or interest in advance, of withdrawals, of repayment and collection of loans; also restricting the power to levy excessive fines, and defining the rights and liabilities of married women stockholders, and prescribing the non-application to these associations of the bonus tax and registry laws for corporations.

§ 152. I. It shall be lawful for any mutual savings fund, or building and loan association now incorporated or hereafter to be incorporated, in addition to dues and interest, to charge and receive the premium or bonus bid by a stockholder for preference or priority of right to a loan in periodical instalments; and such premium or bonus so paid in instalments shall not be deemed usurious, but shall be taken to be a payment as it falls due, in contradistinction to a premium charged and paid in advance; and in so far as said premium or bonus so charged and paid, in addition to dues and interest, shall be in excess of two dollars for each periodical payment, the same shall be lawful, any law, usage or custom to the contrary notwithstanding. It shall also be lawful for any mutual savings fund or building and loan association to charge and deduct interest in advance, in lieu of premiums for preference or priority of right to a loan: *Provided*, That the certificate of incorporation of each association hereafter to be incorporated, and the certificate provided in section nine of this act for those heretofore incorporated, shall set forth whether the premium or bonus bid for the prior right to a loan shall be deducted therefrom in advance or paid in periodical instalments, or whether interest in advance shall be deducted from the loan in lieu of premium or bonus.

§ 153. II. Stockholders withdrawing voluntarily, shall receive such proportion of the profits of the association or such rate of interest as may be prescribed by the by-laws, any law or usage to the contrary notwithstanding; but payment of the value of stock so withdrawn, shall only be due when the funds now by law applicable to the demand of withdrawing stockholders are sufficient to meet and liquidate the same, and then only in the order of the respective times of presentation of the notices of such withdrawals, which must have been presented in writing at a previous stated meeting, and have been then and there endorsed as to times of presentation by the officer designated by the by-laws of the association.

§ 154. III. The by-laws may provide for the involuntary withdrawal and cancellation at or before maturity of shares of stock not borrowed on: Provided, That such withdrawal and cancellation shall be pro rata among the shares of the same series of stock: And provided further, That not less than legal interest shall be credited and allowed to each share so withdrawn and cancelled.

§ 155. IV. A borrower may repay a loan at any time, and in case of the repayment thereof before the maturity of the shares pledged for said loan, there shall be refunded to such borrowers, (if the premiums, bonus or interest shall have been deducted in advance,) such proportions of the premiums, bonus or advance interest bid, as the by-laws may determine: Provided, That in no case shall the association retain more than one one-hundredth of said premiums or bonus for each calendar month that has expired since the date of the meeting upon which the loan was made, or if interest in advance, it shall retain only the interest due on the loan up to the time of settlement: And further provided, That such borrower shall receive the withdrawing value of the shares pledged for said loan, and the shares shall revert back to the association.

§ 156. V. In case of non-payment of instalments of stock, premiums, dues or interest, by borrowing stockholders, for the space of six months, payment of the same, together with the full principal of the loan, may be enforced by proceeding on their securities according to law; and the moneys so recovered shall be paid into the treasury of the association for such uses (loans or otherwise) as may be deemed proper by the association; and if the said moneys so recovered, together with the withdrawal value of the shares of such defaulting borrower, shall exceed the amount it would have required, according to the preceding section, to have voluntarily repaid the loan, together with all the expenses incurred by the association, such excess shall be repaid to such defaulting borrower.

§ 157. VI. Fines or penalties for the non-payment of instalments of dues, interest and bonus or premium, shall not exceed two per centum per month on all arrearages.

§ 158. VII. It shall be lawful for any married woman of full age to hold stock in any of said savings funds, building or loan associations; and as such stockholder she shall have all the rights and privileges of other members, including the right to borrow money from said associations and bid premiums therefor, and shall also have the right and power to secure such loan by transferring her said stock or other securities to said association from which the same was borrowed, or by executing bond and mortgage upon her separate real estate to secure said loan: Provided, however, That the husband of such married woman join in the execution of such bond and mortgage; and such married woman shall also have the right to sell, assign and transfer her said stock or withdraw the same, without joining the husband in such transfer or withdrawal; and it shall be lawful for any such savings fund, building or loan association to collect such loan made to such married woman, including the dues, interest, premium and fines, as loans made by such associations to other members are now by law collected, and such stock or interest in such stock, shall not be liable for the debts of any husband of such married woman.

§ 159. VIII. The bonus or tax due to the Commonwealth upon the capital stock of corporations, as provided for by act of first of May, one thousand eight hundred and sixty-eight, or by any other act, shall not apply to or be due from mutual savings fund, or building and loan associations; nor shall the registry for corporations, prescribed by the first section of the act of first of May, one thousand eight hundred and sixty-eight, the first section of the act of twenty-fourth of April, one thousand eight hundred and seventy-four, and the twenty-sixth section of the act of twenty-ninth of April, one thousand eight hundred and seventy-four, apply to or be required of mutual savings fund, or building and loan associations.

§ 160. IX. Mutual savings fund, or building and loan associations, heretofore incorporated under the provisions of any law, shall be entitled to all the privileges, immunities, franchises and powers conferred by this act, upon filing with the Secretary of the Commonwealth a certificate of their acceptance of the same in writing, under the duly authenticated seal of said association, which certificate shall also prescribe their mode or plan of charging premiums, bonus or advance interest, as set forth in the first section of this act; and upon such acceptance and approval thereof by the Governor, he shall issue letters patent to said corporation reciting the same.

§ 161. X. All laws or parts of laws inconsistent with the provisions of this act are hereby repealed.

Act of May 22, 1883, Sec. 1, P. L. 38. Exemption from taxation for state purposes.

§ 162. Mutual loan and building associations shall be exempt from the provisions of each and every law imposing taxes for State purposes on their capital stock or mortgages, and other securities for moneys loaned to their own members; but the real

estate owned by said association shall be subject to the same rates of taxation as the real estate of other corporations and persons: Provided, however, That the right of the Commonwealth to collect taxes already accrued is hereby reserved.

The above act was made necessary by the decision in Bourguignon Bldg. Ass'n vs. Com. 98 Pa. 54, which held that the act of June 7, 1879, P. L. 112, Sec. 4, repealed the act of April 10, 1879, P. L. 16, Sec. 8.

Act of June 25, 1895, P. L. 303. Power to borrow money.

§ 163. In addition to the corporate powers conferred on building and loan associations by the thirty-seventh section of the act of twenty-ninth of April, one thousand eight hundred and seventy-four, they shall have the right, when a series of stock has matured, or when applications for loans by the stockholders thereof shall exceed the accumulations in the treasury, to make temporary loans of such sum or sums of money to meet such demands, not exceeding in the aggregate of such loan at any one time twenty-five per centum of the withdrawal value of the stock issued by said association, at a rate of interest less than six per centum, and secure the payment of the same by interest bearing order, note or bond as collateral; said loans to be repaid out of the accumulations in the treasury as soon as sufficient is paid in and there is no demand therefor by borrowing stockholders.

Act of June 22, 1897, P. L. 178. Taxing certain kinds of stock.

§ 164. I. Upon all full paid, prepaid and fully matured, or partly matured stock in any building and loan association incorporated under the laws of this State, or incorporated under the laws of any other State and doing business within this State, and upon which annual, semi-annual, quarterly or monthly cash dividends or interest shall be paid, there shall be paid a State tax equal to that required to be paid upon money at interest by the general tax laws of this State; and such tax shall be deducted from the cash dividend or interest so provided for by the secretary or treasurer of such corporation and paid to the State Treasurer. And every such domestic corporation shall annually make return to the Auditor General, at the time other returns for taxation are required to be made, of the amount of its stock outstanding entitled to receive cash dividends or interest; and every such foreign corporation shall, in reports required to be made by them to the Banking Department, make report of the amount of its stock held by residents of this State, entitled to receive cash dividends or interest; and said Banking Department shall, at the time other returns for taxation are required to be made, certify to the Auditor General the amount of such stock each of said foreign corporations had outstanding at the time of its last report to said Banking Department; and upon said sum such foreign corporation shall pay the tax above required to be paid to the State Treasurer upon demand, and failure to make such payment within thirty

days after such demand shall have been made shall subject such corporation to the forfeiture of its right to transact business in this State: Provided, however, That nothing in this act shall be taken to require the payment of any tax upon any unmatured stock of building and loan associations upon which periodical payments are required to be made, or upon such stock after it has matured and is in process of payment.

§ 165. II. All laws or parts of laws inconsistent herewith or supplied hereby are hereby repealed.

Act of June 4, 1901, P. L. 403. Authorizing written bids for preference or priority.

§ 166. I. It shall be lawful for any mutual savings fund or building and loan association, now incorporated or hereafter to be incorporated, to receive bids of premium, or bonus, for the preference or priority of loan, in writing, whether from members or from persons who are not members, but intend to become such if loans are obtained by them, or to receive such bids from others duly authorized, in writing, by members or by persons intending to become such, so to bid: Provided, That such bids shall be received only in open meetings, as bids are now required by law to be received. And the directors of such associations may establish rules and regulations, not inconsistent herewith, for the receiving of such bids and the allotment of loans to the persons making or authorizing such bids; and all such bids heretofore accepted by any such association, and loans made thereon, are hereby confirmed and made valid; and no premium or bonus heretofore collected, or which may be hereafter payable on such loans, shall be deemed usurious by reason of the fact that any such bid was made or authorized in writing.

§ 167. II. All laws or parts of laws inconsistent with the provisions of this act are hereby repealed.

Act of May 8, 1907, P. L. 180.

§ 168. I. Be it enacted, &c., That every director, officer, agent, bookkeeper, or clerk of any bank, trust company, or building and loan association, who wilfully and knowingly subscribes or makes any false statement of facts, or false entries, in the books of such bank, trust company, or building and loan association; or knowingly subscribes or exhibits any false papers, with intent to deceive any person authorized to examine as to the condition of such bank, trust company, or building and loan association; or wilfully or knowingly subscribes to or makes any false report, shall be guilty of a misdemeanor; and, upon conviction, shall be sentenced to pay a fine not exceeding one thousand dollars, or undergo an imprisonment not exceeding two years, or both, at the discretion of the court.

Act of June 12, 1907, P. L. 525.

§ 169. I. Be it enacted, &c., That every bank, trust company, saving fund society, building and loan association, bond and

investment company, provident association or company, or any other corporation now, or which may hereafter be, placed by law under the supervision of the Commissioner of Banking, or which may hereafter be incorporated, whether domestic or foreign, shall furnish each depositor or investor with a receipt in full, by pass-book or otherwise, for all moneys received, whether as deposits, dues, or on account of installments for any trust or investment whatever, which, until refunded, shall constitute a liability upon the part of the corporation, and shall be kept in proper form on books prepared for the purpose.

§ 170. II. In all reports furnished to the Commissioner of Banking the courts of law, or other supervisory authorities, the aggregate of these liabilities shall be set out in full; and it shall not be lawful to reduce the same for the purpose of concealing unadjusted losses, overdrafts, expense charges, or loans, all of which shall be set out in accounts, separate and apart, on the books and reports until adjusted or charged off, and not debited, in any manner whatever, against deposits or other credits for which the corporation may be liable.

§ 171. III. Whenever it may become necessary for any corporation included in this act to borrow money, provided that it already has the legal right so to do, the amount of such liability shall be set out in full on the books and in all reports required by law, together with assets assigned or which may have been guaranteed for a loan or sale or rediscounts. It shall not be lawful to conceal any assets, but a record shall be kept of the same.

§ 172. IV. Violation of any of the provisions of this act shall be deemed a misdemeanor upon the part of any officer or employe of a corporation committing the same, who shall, upon conviction thereof, be punished by a fine not exceeding one thousand dollars, or imprisonment of one year, or both, at the discretion of the court.

§ 173. V. And it shall be the duty of the Commissioner of Banking upon discovery, by report or otherwise, of said misdemeanor to institute criminal proceedings, in form and manner provided by law.

§ 174. VI. All acts or parts of acts inconsistent herewith are hereby repealed.

Act of April 23, 1909, P. L. 169.

§ 175. I. Be it enacted, &c., That any president, vice-president, cashier, treasurer, secretary, teller, bookkeeper, clerk, employe, or agent of any mutual savings bank, savings bank, bank of discount and deposit, trust company, title insurance company, surety company, or safe deposit company, incorporated under the laws of this Commonwealth; or of any private bank or unincorporated association, receiving deposits of money; or of any building and loan association, incorporated under the laws of this Commonwealth, or authorized to do business therein.—who shall embezzle, abstract, or wilfully misapply any of the

moneys, funds, or credits of any of said institutions, or who shall issue or put forth any certificate of deposit, draw any order or bill of exchange, make any acceptance, assign any note, bond, draft, bill of exchange, mortgage, judgment, or other instrument in writing, or who shall make any false entry in any book, report, or statement of such institution, with intent, in either case, to injure or defraud such institution, or any other company, body politic or corporate, or any individual person, or to deceive any officer of such institution, or any bank examiner or other person legally authorized to examine the affairs of any such institution; and any person, who, with like intent, aids or abets any president, vice-president, cashier, treasurer, secretary, director, trustee, teller, bookkeeper, clerk, employe, or agent of such institution, in any violation of this act,—shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine of not less than five hundred dollars nor more than five thousand dollars, and undergo imprisonment for not less than six months nor more than five years, or either or both, in the discretion of the court.

§ 176. II. Whenever the Commissioner of Banking shall have knowledge of any violation of this act, it shall be his duty to institute prosecutions against all persons violating any of the provisions hereof.

Act of April 23, 1909, P. L. 171.

§ 177. I. Be it enacted, &c., That any person who shall make, utter, circulate, or transmit to another, or others, any statement untrue in fact, derogatory to the financial condition of any bank, banking house, banking company, trust company, surety company, guarantee company, title insurance company, or other financial institution in this Commonwealth, with intent to injure any such financial institution; or who shall counsel, aid, procure, or induce another to originate, make, utter, transmit, or circulate any such statement or rumor, with like intent, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine or not more than five thousand dollars ($5,000), and by imprisonment at hard labor for a term not exceeding five (5) years.

Act of April 29, 1909, P. L. 289.

§ 178. I. Be it enacted, &c., That from and after the passage of this act, the same individual shall not be, at the same time, the holder of more than one of the following offices; namely, president, vice-president, secretary, treasurer, or solicitor of any building and loan association, incorporated under the laws of this Commonwealth.

§ 179. II. That any and every building and loan association, incorporated under the laws of this Commonwealth, which has more than one of said offices held or filled, at the same time, by the same individual, shall be liable to a fine in the sum of five hundred dollars, to be collected by lawful process instituted by

the Attorney General of this Commonwealth, on information furnished by the Commissioner of Banking, to be paid to the Treasurer of the Commonwealth, for the use of the Commonwealth.

Act of May 14, 1913, No. 144.

An act enlarging the powers of mutual savings funds or building and loan associations, authorizing them to accumulate a reserve fund to pay contingent losses, and validating such funds heretofore accumulated, to permit members to secure the repayment of one-half of their loans by a straight bond and mortgage, for a fixed term, and authorizing said associations to so secure loans; authorizing said associations to make loans in certain cases upon a stipulated premium; and further authorizing them to loan money to other like associations under certain conditions, and repealing all laws inconsistent with this act.

1. Be it enacted, &c., That it shall be lawful for any mutual savings fund or building and loan association now incorporated or hereafter to be incorporated.

§ 180. (a) To set aside from the net profits a sum, not to exceed 5 per centum thereof each year, as a reserve fund for the payment of contingent losses, until the total amount of such fund so set aside shall equal 5 per centum of the assets of such association: Provided, That no association shall reduce the dividend or interest payable on voluntary withdrawal, as fixed by the board of directors or its by-laws for that purpose, and all such funds heretofore accumulated by any such association from its profits, not in excess of 5 per centum of the assets, are hereby confirmed and made valid.

Provided, however, That if at any time the assets of the association shall become reduced in amount, and the contingent fund should thereby exceed 5 per centum of the remaining assets of the association, then, at the next dividend period, the amount in excess of 5 per centum in said contingent fund shall be transferred to the general profit account of such association.

§ 181. (b) To permit members, when loans are granted to secure the repayment thereof, if so desired, by giving to the association a straight bond and mortgage on real estate, for a fixed period for an amount not to exceed one-half of the loan, and upon such other terms and conditions as may be agreed upon; and for the remainder of the loan, which shall be on shares of the association, an installment bond and mortgage on real estate in form as now provided by law: Provided, That it shall not be lawful to collect premiums or fines on such straight bond and mortgage.

§ 182. (c) To provide in its by-laws that the loans shall be made first to the members of the association, or to persons intending to become members, if the loan be secured, who shall bid the highest premiums for the preference or priority in procuring loans, and it shall be competent and lawful for the borrower from such association to agree in writing upon a given rate of

premiums, not to exceed 2 per centum per annum upon the amount of the loan in addition to the interest to be paid upon such loan, without bidding for preference or priority. And no premium contracted for under this section, with or without bidding, shall be deemed usurious although in excess of the legal rate of interest.

§ 183. 2. When there are moneys remaining in the treasury of any mutual savings fund or building and loan association unapplied for by any of its stockholders and not required to pay withdrawals and matured stock and borrowed money, if any, it shall be lawful for the board of directors to make temporary loan of such moneys to other mutual savings fund or building and loan associations on interest-bearing order, note or bond: Provided, that such order, note or bond shall not bear a higher rate of interest than the lawful rate: Provided further, that the board of directors of any mutual savings fund or building and loan association shall not loan to any other one mutual saving fund or building and loan association more than 10 per centum of its assets, and not more than 25 per centum of its assets in the aggregate may be so loaned.

§ 184. 3. All acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

Act of April 21, 1858, P. L. 412.

§ 185. All insurance and trust companies, savings fund and building associations incorporated under or by any law of this Commonwealth, are authorized to purchase, hold, sell and convey ground rents; and all conveyances of ground rents heretofore made by or to any such corporation, shall be good and effectual, and have the same force and effect as if the same had been made subsequent to the passage of this act.

Act of May 11, 1901, P. L. 153, Regulating Foreign Mutual Saving Fund or Building and Loan Associations doing business within the Commonwealth of Pennsylvania.

§ 186. Sec. 1. Be it enacted, &c., That from and after the first day of September, one thousand nine hundred and one, no mutual savings fund, building, building and loan, or co-operative loan association, or corporation, or other association, company or corporation, by whatsoever name it may be called, claiming to have the right under its charter to take premiums for the preference or priority of loans, incorporated under the laws of any other State or foreign government, shall do any business within this Commonwealth without having fully complied with the requirements of this act, and without first having received a certificate from the Commissioner of Banking, certifying that it has fully complied therewith, and authorizing it to do business in this Commonwealth; and no person shall act as agent, solicitor or local treasurer of any such association, company or corporation, within this Commonwealth, in any manner whatsoever relating to the sale

of stock of such association, company or corporation, soliciting subscriptions or receiving payments therefor, soliciting applications for loans or receiving payments on account of dues, fines or premiums upon stock or loans, or in any manner relating to the business usually transacted by such association, company or corporation, until such association, company or corporation shall have received such aforesaid certificate from the Commissioner of Banking, and until such agent, solicitor or local treasurer shall himself have received a certificate from said Commissioner, authorizing him to act on behalf of such association, company or corporation: Provided, That any such association, company or corporation, doing business within this Commonwealth prior to the first day of September, one thousand nine hundred and one, and having prior to said date stock and loans, or either thereof, outstanding in this Commonwealth, may continue, either directly or through its agents, to collect instalments, interest, dues and premiums thereon; but the issuing of any new stock, soliciting subscriptions therefor, placing new loans, or soliciting applications therefor, or receiving payments on account of instalments, dues, fines, interest or premiums upon such new stock or loans, or transacting any other business within this Commonwealth other than such as relates to stock issued or loans made prior to said date, shall be deemed a violation of this section.

§ 187. Sec. 2. No association, company or corporation described in the first section of this act shall be authorized by the Commissioner of Banking to do business within this Commonwealth until it shall satisfactorily appear to said Commissioner that such association, company or corporation is solvent, and has deposited with some trust company of this Commonwealth, to be approved by said Commissioner, the sum of at least one hundred thousand dollars in bonds of the United States, of the State of Pennsylvania, or of cities, counties, boroughs or school districts of this Commonwealth, as security for the creditors and shareholders thereof residing in this Commonwealth. None of the securities so deposited shall be withdrawn by any such association, company or corporation without the permission of said Commissioner, in writing and under the seal of his office, and no such withdrawal shall be permitted which will reduce the amount so deposited to less than the sum of one hundred thousand dollars. Exchanges of such bonds may be made, from time to time, with the approval of the Commissioner of Banking; and if any of said bonds are called in for payment, the proceeds thereof shall remain in the hands of the depositary until other bonds of the classes above mentioned shall be substituted, in like amount, for the bonds so paid, whereupon such depositary shall, with the permission in writing of the said Commissioner, pay over such proceeds to the sociation, company or corporation depositing said bonds. When any such association, company, or corporation shall desire to discontinue its business within this Commonwealth, it may apply to the court of common pleas of Dauphin county,by petition, setting forth its resources and liabilities within and with-

out this Commonwealth, and particularly its liabilities to creditors and shareholders within this Commonwealth; and thereupon, after due hearing, of which hearing the Commissioner of Banking shall have such notice as the said court may determine, the said court may make such order as will permit the withdrawal of said bonds or a part thereof, and will at the same time fully protect the rights of all creditors and shareholders of such association, company or corporation residing in this Commonwealth. Trust companies, acting as depositories under this section, shall pay over the income of the bonds deposited with them, as aforesaid, to the association, company or corporation depositing them, and shall make report in writing, signed and sworn to by the president or treasurer thereof, to the Commissioner of Banking, semi-annually, on the first day of January and the first day of July in each year, setting forth the amounts and kinds of bonds deposited with them, as aforesaid, and by what association, company or corporation the same have been deposited; and for failure to make such report within thirty days after the time fixed, as aforesaid, for making such reports, such trust company shall be liable to a penalty of fifty dollars, to be recovered in the name of the Commonwealth as other penalties are by law recoverable, and the amount so recovered shall be paid into the State Treasury. The trust company selected by any such association, company or corporation as its depository of bonds, under this section, may be changed from time to time by such association, company or corporation, with the approval in writing of the Commissioner of Banking.

§ 188. Sec. 3. Any association, company or corporation described in the first section of this act, desiring a certificate authorizing it to do business within this Commonwealth, shall present to the Commissioner of Banking its application, under its seal, therefor, accompanied by a statement, subscribed and sworn or affirmed to by its president or other principal officer and its treasurer, setting forth, in such form and in such detail as the said Commissioner may prescribe, its resources and liabilities; and said Commissioner may, before issuing such certificate, require such further information, under oath or affirmation, as he may deem necessary for the purpose of fully ascertaining the solvency of such association, company or corporation; and such application shall be further accompanied by a fee of one hundred dollars, which fee said Commissioner shall, immediately upon the issuing of such certificate, pay into the State Treasury. No such association, company or corporation shall receive such certificate, authorizing it to do business within this Commonwealth, or do business therein, until it has filed with said Commissioner a written stipulation under its seal, agreeing that any legal process affecting such association, company or corporation, served on the Commissioner of Banking or a person designated by him, or an agent designated in said stipulation to receive service of process for said association, company or corporation, shall have the same effect as if actually served on such association, company or corporation within this

State; and if such association, company or corporation should cease to maintain such agent in this State, so designated, such process may thereafter be served on the Commissioner of Banking or on the person designated by him; but so long as any liability of such stipulating association, company or corporation to any resident of this State continues, such stipulation shall not be revoked or modified, except that a new one may be substituted, for the purpose of designating a different person to receive such service of process; and the term process, as used herein, shall include all process whatever, whether mesne or final, and all rules, notices, order or decrees in any judicial proceeding whatsoever, within this Commonwealth. And any such process may be served in any county of this Commonwealth in which the president or other principal officer, secretary, treasurer or general manager, of such association, company or corporation, or the Commissioner of Banking, the person designated by said Commissioner, or the agent designated in said stipulation to receive service of process for such association, company or corporation, resides or may be found; and for the purpose of effecting such service, the sheriff, constable, or other officer to whom such process is directed, may deputize the sheriff, constable, or other officer, in the county in which such president or other principal officer, secretary, treasurer or general manager, the person designated by the Comissioner of Banking, or the agent designated in said stipulation, resides or may be found, or of the county in which the office of the Commissioner of Banking is located, to serve the same; and the fees of the officer serving such process shall be the same as are by law allowed for the service of similar process in other cases, together with mileage allowed by law in such cases, the distance to be computed from the residence of the officer serving or executing such process, and no further.

§ 189. Sec. 4. Any association, company or corporation, described in the first section of this act and authorized to do business within this Commonwealth may, from time to time, designate to the Commissioner of Banking, in writing and under its seal, any agents, solicitors or local treasurers whom it desires to have authorized to do business for it within this Commonwealth; and thereupon the said Commissioner shall issue a certificate to each of said agents, solicitors or local treasurers, authorizing him to act on behalf of such association, company or corporation. A fee of one dollar shall be paid to the Commissioner of Banking for every such certificate. Each certificate issued under this section shall expire at the end of one year from its date, and may, upon the payment of a like fee, be renewed from year to year, until said Commissioner has been notified that the authority of such agent, solicitor or local treasurer has been revoked by the association, company or corporation appointing him. All fees collected by the Commissioner of Banking under this section shall be paid by him into the State Treasury.

§ 190. Sec. 5. Every association, company or corporation described in the first section of this act and authorized to do business within this Commonwealth shall, annually, upon the first Monday of May, pay into the State Treasury a license fee of one hundred dollars; and in case of neglect or refusal by any such association, company or corporation to pay the same, as aforesaid, in to the State Treasury, at the time aforesaid, the Auditor General shall settle an account against such association, company or corporation for the amount due and payable by it as aforesaid, and shall proceed to collect the same, in the same manner and under the same penalties as are provided for the collection of taxes and penalties under existing laws.

§ 191. Sec. 6. Whenever it shall appear to the Commissioner of Banking that any association, company or corporation, described in the first section of this act and authorized to do business within this Commonwealth, is insolvent or is conducting its business fraudulently, or is in any manner doing business contrary to the laws of this Commonwealth governing domestic building and loan associations, it shall be the duty of said Commissioner to communicate the facts to the Attorney General, whose duty it shall then be to apply to the court of common pleas of the county of Dauphin, or in vacation to any of the judges thereof, for an order requiring said association, company or corporation to show cause why its certificate, authorizing it to do business within this Commonwealth, should not be revoked. Upon the return of said order, the said court shall hear the allegations and proofs of the respective parties, and if it shall thereupon appear that said association, company or corporation is insolvent or is conducting its business fraudulently, the said court shall make an order revoking such certificate; but if it shall appear that such association, company or corporation is doing business contrary to law, but without any fraudulent intent, the said court may either revoke such certificate or make such other order as to it may seem meet and proper. Immediately upon the granting by said court of any order revoking the certificate authorizing any such association, company or corporation to do business within this Commonwealth, it shall be the duty of the Commissioner of Banking to revoke all certificates granted to agents, solicitors or local treasurers of such association, company or corporation, and to notify, in writing, such agents, solicitors and local treasurers of such revocation.

§ 192. Sec. 7. Any association, company, or corporation described in the first section of this act, doing business within this Commonwealth without having first received from the Commissioner of Banking a certificate authorizing it so to do, or, having received such certificate, doing business within this Commonwealth after five days from the date of mailing a notice of the revocation of such certificate by the Commissioner of Banking to the principal office of such association, company or corporation, shall be subject to a penalty of five hundred dollars for

each month or fraction thereof during which such illegal business is transacted, to be recovered, in the name of the Commonwealth, either by an action of assumpsit or by foreign attachment, and shall be prohibited from doing business within this Commonwealth until such penalty is, or penalties are, fully paid. Any person violating the provisions of the first section of this act, or any person acting as agent, solicitor or local treasurer of any such association, company or corporation after its certificate authorizing it to do business within this Commonwealth has been revoked, and knowing that the same has been revoked, shall be guilty of a misdemeanor; and upon conviction thereof shall be sentenced to pay a fine of not less than fifty dollars nor more than five hundred dollars, and upon conviction of a second offence shall be sentenced to pay a like fine and undergo an imprisonment not exceeding one year, or either, in the discretion of the court.

BY-LAWS

ARTICLE I.

§ 193. *Title and Object.*

This Association shall be known by the name, style and title of "MORTGAGE BUILDING AND LOAN ASSOCIATION," the character and object of which is to accumulate a fund by the contributions of its members, which shall enable them to purchase a homestead or other real estate, or to borrow money for their use and investment in any lawful business, and for these purposes to have and possess and enjoy all the rights, benefits and privileges of the Acts of Assembly relating to Building and Loan Associations.

ARTICLE II.

Stockholders and Stock.

Section 1. The capital stock shall not exceed such amount as is authorized by the Charter, or such amount as may thereafter be authorized by any amendment or amendments thereto. Each share shall be of the par value of two hundred dollars.

Sec. 2. The Directors may from time to time, at their discretion, issue shares of stock in series, and may limit the number of shares to be issued to or owned by one person.

Sec. 3. Any person who is not under legal disability and who is satisfactory to the Directors may become a Stockholder upon payment of the entrance fee and dues hereinafter provided for, and by complying with the By-Laws, Rules and Regulations of this Association. Minors and others may hold stock in the names of guardians or trustees, who shall be entitled to all the privileges of other stockholders, except that they shall not be eligible for election as Directors.

Sec. 4. Each and every Stockholder shall pay an entrance fee of twenty-five cents for each share of stock subscribed for by him, and shall pay also the sum of one dollar per month for each share, as dues or installments thereon, together with all fines, until the amount so paid, together with the amount of earnings of the Association apportioned to such shares, shall amount to the sum of two hundred dollars, or until such time as the Association may be legally dissolved. All payments of any kind and for any purpose, excepting only real estate examination fees and fees to be paid to the Secretary for transfers of stock and for issuing duplicate stock certificates, as hereinafter provided for, must be made at the regular monthly meeting of the Directors of the Association, and no payments made at any other time or place to any person or persons whomsoever shall be considered valid or binding upon the Association, any law, usage or custom to the contrary notwithstanding.

Sec. 5. Every Stockholder neglecting to pay his monthly installments or dues, together with all interest, premiums and fines, shall pay to the Association a fine of 2 per cent. per month upon the amount

of his indebtedness, to be charged and collected with the monthly installments or dues.

Sec. 6. Every share of stock shall be subject to a lien for the payment of all unpaid installments or dues, premiums, interests, fines and other charges, and the Directors may prescribe the form and manner of enforcing such lien.

Sec. 7. In case any stockholder shall neglect or refuse to pay his monthly dues or interest, together with all fines due thereon, for the space of six months, the Board of Directors may, in its discretion, forfeit the stock, and from thence he shall cease to be a stockholder. There shall then be paid him, upon demand, the amount of dues actually paid in by him, less all amounts due to the Association, and his proportionate share of all losses and expenses that may have been incurred by the Association.

Sec. 8. Any Stockholder wishing to withdraw from the Association shall give notice in writing of his intention at a regular monthly meeting of the Directors, held for the purpose of receiving dues, and shall be entitled at or after the next such regular monthly meeting subsequently held, to receive, upon surrender and cancellation of his certificate of stock, the withdrawal value of his stock; *Provided,* That no more than one-half of the money in the treasury of the Association shall be at any one time applied to meet the demands of withdrawing Stockholders without the consent of the Directors; *Provided, also,* That all notices of withdrawal shall be endorsed by the Secretary, with the date and time of their presentation, and that the demands of withdrawing Stockholders be paid in order of time in which the respective notices of withdrawal were presented, and that when the amount of money available for such purpose be not sufficient to pay in full all demands of those equally entitled to withdraw, it shall either be divided pro rata among those so entitled, or, at the discretion of the Directors, lots may be cast to determine those who shall be paid. *And, provided, also,* That no Stockholder shall be entitled to withdraw whose stock has been assigned to the Association as security for a loan.

Sec. 9. The Association may purchase and cancel its own stock and may compel the Stockholders to accept the withdrawal value of their stock at such times and in such way and manner as the Directors may legally determine. The Directors shall from time to time fix the amount of interest or profit to be allowed to withdrawing stockholders.

Sec. 10. Upon the death of a Stockholder his legal representative shall be entitled to receive the same amount per share as above provided for members voluntarily withdrawing, but no fine shall be charged against the stock of such decedent after the date of his death unless his legal representative, by continuing the payments on said stock or otherwise, shall assume the future payments thereon.

Sec. 11. Every Stockholder shall be entitled to a certificate for the number of shares held by him; said certificate to be issued in the name and under the seal of this Association by the Secretary, signed by the President and countersigned by the Treasurer.

Sec. 12. Stockholders may transfer their stock to persons satisfactory to the Directors, except as hereinafter provided, by assignment of their certificates in the presence of the Secretary, in person

or by attorney, and the person to whom the same has been assigned may thereupon become a Stockholder of this Association by complying with the By-Laws, Rules and Regulations thereof. For every such transfer the person to whom the stock has been transferred shall pay to the Secretary a fee of ten cents per share, but no fee shall be charged for the transfer of stock to the Association as security for a loan.

Sec. 13. Whenever any Stockholder shall make application for the issuance of a duplicate of a lost certificate of stock, he shall make affidavit of the facts and advertise the loss in two daily newspapers published in the English language once a week for three consecutive weeks; he shall then deposit such affidavit, together with proof of such advertising with the Secretary, and give such security as the Directors may require, whereupon there shall be issued to him a new certificate of the same tenor as the one lost. The Secretary shall be entitled to a fee of ten cents per share for every such duplicate certificate, such fee to be paid by the Stockholder.

Sec. 14. No Stockholder shall vote unless the stock be in his name at least six weeks before an election.

Sec. 15. The board of directors may in its discretion set aside from the net profits a sum not to exceed 5 per centum thereof each year as a reserve fund for the payment of contingent losses until the total amount of such fund so set aside shall equal 5 per centum of the assets of this association.

ARTICLE III.

Nomination, Election and Duties of Officers.

Section 1. This Association shall be governed and managed by a Board of seventeen Directors, all of whom must be stockholders in good standing, to be elected by ballot at the annual meeting of the stockholders to be held as hereinafter provided. They shall hold office for one year, or until their successors are elected.

Sec. 2. Nomination of candidates for election as Directors must be made in writing, signed by at least five stockholders in good standing, and filed with the Secretary at least twenty-one days prior to the election, and no candidates other than those so nominated shall be voted for.

Sec. 3. The Secretary shall notify the Directors at least fifteen days prior to the election of all nominations so filed with him, and the Secretary shall thereupon have printed a suitable ballot to be used at the election, and no ballots other than those so printed shall be received at the election. The ballot shall be in such form that it may be readily marked by the stockholders in a way to express their wishes.

Sec. 4. The President shall, with the consent of the Directors, appoint a judge and two tellers, all of whom must be stockholders in good standing and none of whom must be candidates, who shall be sworn according to law and who shall conduct the election. The polls shall be open from 7.30 to 8.30 P. M., when they shall be closed, and the ballots immediately counted. The seventeen candidates receiving the highest number of votes shall be declared elected.

Sec. 5. The Directors so elected shall meet and organize as soon as practicable after their election, and shall from among their own number, elect a President, Vice-President, Treasurer and Assistant Secretary, who shall hold office for the term of one year, or until their successors are elected. They shall also elect, from among the stockholders, a Secretary and one or more solicitors, who must be members of the Bar, and also in their discretion, one or more conveyancers.

Sec. 6. Any officer or Director who shall absent himself from three consecutive meetings of the Board, excepting in case of sickness or absence from the city, may have his place declared vacant by a majority vote of the remaining Directors.

Sec. 7. All vacancies in the Board of Directors occurring by reason of the failure of the Stockholders to elect the full number of Directors at the annual election, shall be filled by a majority vote of the directors elected at such election.

Sec. 8. All vacancies in the Board of Directors, occurring from any cause between the times of the annual meeting shall be filled by a majority vote of the remaining Directors.

Sec. 9. The Directors shall have full power and authority to adopt a common or corporate seal, and to alter and renew the same at pleasure.

Sec. 10. The President shall preside at all meetings of the Association and the Board of Directors, and preserve order thereat; sign all orders on the Treasurer for the payment of money ordered by the Directors when first attested by the Secretary, and perform all other duties usually pertaining to his office, and shall have the custody of the Charter, By-Laws and the Official Bond and other securities given by the Treasurer.

Sec. 11. The Vice-President shall perform all the duties of the President in case of the absence, death or resignation of the President, or in case of the inability of the President to act.

Sec. 12. The Treasurer shall receive and take charge of all moneys paid to the Association, and give receipts therefor; he shall pay all orders of the Board when signed by the President and attested by the Secretary; he shall receive and hold in trust for the Association, all securities, bonds, mortgages, policies of insurance, and other papers (excepting his own bond and all obligations and securities given by him) belonging to the Association; he shall keep a correct account of all moneys received and paid out in a book to be provided for that purpose, which book shall be at all times subject to the call and inspection of the Directors; he shall make a report of the transactions of the preceding month at each stated meeting of the Directors; and he shall deposit all moneys in the name of the Association in such place and under such conditions as the Directors may from time to time designate. He shall present his books and all securities held by him annually to the Auditing Committee and to the Directors or to any properly appointed committee, at such time as the Directors may require. He shall give security satisfactory to the Directors for the faithful discharge of his duties, and at the expiration of his term he shall deliver to his successor all moneys, books and papers of the

Association in his possession. He shall receive such compensation as the Directors may determine, but such compensation shall not be diminished during his term of office.

Sec. 13. The Secretary shall keep and record accurate minutes of the proceedings of the Association and of the Directors; be present at all meetings of the Stockholders and of the Directors; attend to all transfers and attest all certificates of stock, and all orders of the Directors drawn on the Treasurer; he shall have in charge the seal, and all the books and papers belonging to the Association not pertaining to any other office; he shall keep accurate accounts with the members and shall be prepared at all meetings, both of the Stockholders and the Directors, to state the financial condition of the Association, and at the annual meeting and at all other times when ordered to do so by the Directors, he shall furnish a detailed statement thereof. His books and papers shall be at all times subject to the call and inspection of the Directors. He shall perform all other such duties as usually pertain to the office of Secretary. He shall keep a special record of all loans made by the Association upon real estate subject to a prior encumbrance and require Stockholders receiving such loans to produce receipts for the interest on such prior encumbrances. He shall notify the Directors of any default on the part of the stockholders. At the expiration of his term of office he shall deliver to his successor, all books, papers and other property in his possession belonging to the Association. He shall receive for his services such compensation as the Directors may determine, and such compensation shall not be diminished during his term of office.

Sec. 14. The Assistant Secretary shall assist the Secretary in all matters pertaining to his office, and shall attend to such other matters as may be ordered by the Directors. He shall receive for his services such compensation as the Board of Directors may determine, and such compensation shall not be diminished during his term of office.

Sec. 15. The Solicitors shall attend to all legal and conveyancing matters of the Association, and shall prepare all bonds, mortgages, agreements, and other writings of a legal nature to be given or taken by this Association. They shall examine the title and make searches, or procure title insurance, for all real estate offered the Association as security for loans, and their fees and expenses for such work shall be paid by the borrowers. All disputes as to the amount of their charges and disbursements shall be settled by the Directors. In the event of a defect in the title to real estate offered by a borrower as security for a loan by reason of which the same is not accepted, the fees and expenses of the Solicitors shall be paid by the Association, and the Association shall be entitled to a lien upon the stock of the borrower for the amount paid, provided that the Association shall not be required to pay more than the balance in its hands belonging to such borrower after deducting the amount due the Association. They shall examine the description of the real estate advertised to be sold by the Sheriff, and if there be any property against which this Association has a claim, immediately report the same to the Association. For all services rendered to the Association itself they shall be paid such compensation as may be agreed upon by the Directors. They shall enter such security for the faithful performance of their duties as the Directors may require.

ARTICLE IV.

Meetings.

Section 1. The Directors shall hold a regular meeting at least once a month, at such time and place as they may designate by standing order, for the purpose of receiving dues and other payments of the Stockholders, and for the purpose of transacting all such other business of the Association as may legally come before the said meeting.

Sec. 2. Special meetings of the Directors may be called by the President at his discretion, and must be called by him upon the request in writing of at least five Directors. In such written request shall be stated the time, place and object of the proposed meeting, and no business other than that stated in said written request shall be transacted at such special meeting.

Sec. 3. A meeting of the stockholders for the purpose of electing the Board of Directors and for the purpose of transacting any other business of the Association which may legally come before the said meeting shall be held in the month of April in every year, upon the second Thursday of the month, at 7.30 P. M. at the regular meeting place, unless another day, time or place in the said month be ordered by the Directors.

Sec. 4. Special meetings of the Stockholders may be called at any time by the President, with the consent of the Directors, and must be called by him upon the written request of not less than twenty-five Stockholders. Such written request must state the time, place and object of the proposed meeting. Notice of all such meetings (special) shall be given by the Secretary mailing to the last known post office address of each Stockholder, at least forty-eight hours prior to such meeting, a brief notice stating the time, place and object thereof. No business other than that stated in such notice shall be transacted at any special meeting.

Sec. 5. At all meetings, both regular and special, of the Directors, a majority of the Directors shall constitute a quorum, unless by reason of vacancies or otherwise there shall be less than seventeen Directors in office, in which case a majority of the Directors holding office shall constitute a quorum.

Sec. 6. At all meetings, both regular and special, of the Stockholders, fifteen Stockholders shall constitute a quorum.

Sec. 7. The order of business at all regular and special meetings, both of Directors and Stockholders, may be prescribed by the Directors.

ARTICLE V.

Loans.

Section 1. Whenever and as often as the funds of the Association permit, the same shall be offered for loan in open meeting, and the Stockholder who shall bid the highest premium shall be entitled to receive a loan of two hundred dollars per share without deduction of premium, which premium shall be paid by monthly installments; that is to say, the bids shall be the amount per share per month which the

bidders are willing to pay in addition to their dues, and interest for the preference or priority of loan; the borrower may, however, agree in writing upon a given rate of premium, not to exceed two per cent per annum upon the amount of the loan in addition to the interest to be paid upon such loan, without bidding for preference or priority. In case satisfactory security be not given within thirty days, the Stockholder so bidding shall be charged with one month's interest, the premium bid, and all expenses incurred. No Stockholder who is in arrears to the Association shall be entitled to a loan until such arrearage be discharged.

Sec. 2. The Directors may, in their discretion, receive bids in writing for the preference or priority of loan from the Stockholders or from persons who are not Stockholders, but who intend to become such if loans are obtained by them, and they may receive such bids in writing from any person duly authorized by a Stockholder or by a person intending to become a Stockholder.

Sec. 3. A borrowing Stockholder must transfer to the Association at least one share of stock for every two hundred dollars of his loan as collateral security, and in case the loan be for more than the withdrawal value of his stock, he must give in addition such other security as the Directors deem satisfactory: *Provided,* however, that the board of directors may permit members when loans are granted to secure the repayment thereof, if so desired, by giving to the association a straight bond and mortgage on real estate, without the assignment of any shares of stock, for a fixed period, for an amount not to exceed one-half of the loan, and upon such other terms and conditions as may be agreed upon, and the remainder of the loan shall be on shares of stock of this association, as before provided, and upon installment bond and mortgage on real estate; provided, further, that no premiums or fines shall be charged on such straight bond and mortgage.

Sec. 4. In case real estate be offered as security, a written description of the same must be filed with the Secretary and an examination fee, the amount of which is to be fixed by the Directors, must be paid in advance. This examination fee is to compensate the Directors for examining the real estate so offered and for reporting on the condition and value thereof.

Sec. 5. Loans may be made upon fractional parts of a share in the discretion of the Directors.

Sec. 6. Shares assigned to the Association as collateral security for loans may not be transferred until the assignee, transferee or new owner has executed and delivered to the Association a bond, with a warrant of attorney to confess judgment attached, in form satisfactory to the Association, in double the amount of the loan, conditioned for the faithful performance by said assignee, transferee or new owner, or his heirs, executors or administrators of all the covenants, promises, stipulations and agreements contained in the original bond and mortgage. Said bond shall not be a release of the original or of any subsequent obligations.

Sec. 7. All expenses in connection with a loan shall be paid by the borrower.

ARTICLE VI.

Auditing Committees.

Section. 1. At the regular stated meeting of the Directors held in the month preceding the annual meeting, the President shall, with the consent of the Directors, appoint an Auditing Committee to be composed of five Stockholders, not more than two of whom shall be Directors, who shall audit the books and accounts of the Treasurer and Secretary, and examine all securities of the Association. They shall make a written report thereon to the Stockholders at the annual meeting.

Sec. 2. The President may at any time, with the consent of the Directors, appoint a committee to examine the affairs of the Association and report thereon, or a committee to audit and report upon the books and accounts of any and all officers of the Association.

ARTICLE VII.

Amendments.

All amendments, alterations and additions to these By-Laws must be made in writing at a regular monthly meeting of the Directors; they shall then be read and shall lie over without debate until the next monthly meeting, at which time they shall be debatable and subject to amendment. If then passed by a majority vote of the whole number of Directors then holding office they shall be submitted to a vote of the Stockholders at the next annual meeting or at a special meeting properly called for that purpose. At such meeting of the Stockholders they shall not be subject to amendment and shall be voted upon section by section as passed by the Directors.

§ 194.

Following is a form of building and loan association mortgage with the usual bond and warrant which accompanies it. If no premium is charged by the association, the parts relating to premium may be omitted; but if it is desired to use only one kind of printed form, insert the word "nothing" in the space where the amount of premium should be inserted. This form can be used for both first and second mortgages. The parts in italics are filled in by the solicitor or conveyancer, the balance being printed. In the preparation of these forms the effort has been made to leave as little as possible to be filled in, thereby avoiding the possibility of mistakes and unnecessary labor.

The Mortgage

This Indenture Made the

Seventh....day of.....*May*.....in the year one thousand nine hundred and...*thirteen* (*1913*). BETWEEN.....*JOHN DOE, of the City of Philadelphia, and MARY, his wife*..... of the one part (hereinafter called the Mortgagor*s*.), and *THE HANDEL AND HAYDN BUILDING AND LOAN ASSOCIATION* of the other part, (hereinafter called the Mortgagee).

Whereas, the said Mortgagor*s*, in and by a certain Obligation or Writing, obligatory under ..*their*..hand*s* and seal*s* duly executed, bearing even date herewith, stand bound unto the said Mortgagee in the sum of.....*FOUR THOUSAND*..... Dollars, lawful money of the United States of America, conditioned to keep and maintain at all times, until the full discharge of the said Obligation, a policy or policies of Fire insurance in good and approved company or companies, duly assigned as collateral security to the Mortgagee or its Successors or Assigns, to an amount not less than.....*TWO THOUSAND*.....Dollars, upon the buildings on the premises hereinafter described, and conditioned for the payment of the just sum of.....*TWO THOUSAND*.....Dollars, at any time within One year from the date thereof, together with interest thereon, payable monthly, at the rate of Six per cent. per annum, and together with all fines imposed by the Constitution and By-Laws of the aforesaid Association, and a monthly premium of.....*Two dollars and fifty cents*.....for the same, in like money, payable monthly, at the regular meeting of each and every month thereafter, and should also well and truly pay, or cause to be paid unto the said Mortgagee, its Successors and Assigns, the sum of.....*Ten*..... Dollars, at the said regular meeting of each and every month thereafter, as and for the monthly contribution on.....*ten*..... Shares of the Capital Stock of the said Mortgagee, now owned by the said Mortgagor*s*, without any fraud or further delay; and should also deliver to the said Mortgagee, its Successors or Assigns, on or before the First day of September of each and every year, receipts for all water rent and taxes of the current year assessed upon the hereinafter described premises. **Provided, however,** and it is thereby expressly agreed, that if at any time default should be made in the payment of the said principal money when due, or of the said interest, or of the said fines, or of the said monthly premium, or the monthly contribution on said Stock, for the space of six months after any payment thereof should fall due, or in the prompt and punctual maintenance of said fire insurance so assigned as aforesaid, or in such delivery to the said Mortgagee, its Successors or Assigns, on or before the First day of September of each and every year, of such receipts for such water rent and taxes of the current year upon the premises mortgaged, or if the said Mortgagor should not well and truly pay, or cause to be paid, the interest upon the first mortgage, and the ground rent,

if such there be, the water rent and other municipal claims and taxes, on the hereinafter described premises, when the same should become due and payable, and produce receipts therefor to the said Mortgagee within thirty days from the time when the same shall grow due and become payable, then and in such case the whole principal debt aforesaid should, at the option of the said Mortgagee, its Successors and Assigns, immediately thereupon become due, payable and recoverable, and payment of said principal sum, and all interest, and all fines thereon, and monthly premiums due, as well as any contribution on said Shares of Stock then due, may be enforced and recovered at once, any thing thereinbefore contained to the contrary thereof notwithstanding. And it was therein further agreed, that if the same or any part thereof has to be collected by proceedings at law, then an attorney's collection fee of Five per cent. should be added to the amount so collected as a part of the costs of such proceedings. And the said Mortgagors for ..*themselves, their*..Heirs, Executors, Administrators and Assigns, thereby expressly waived and relinquished the right of inquisition on any real estate that may be levied upon to collect that obligation, and did voluntarily condemn the same, and authorize the Prothonotary to enter upon the Fieri Facias..*their*..said voluntary condemnation, and further agreed that the said real estate may be sold upon a Fieri Facias; and also all benefit that might accrue to them by virtue of any and every law made or to be made exempting the premises hereinafter described, or of any other premises or property whatever, from levy and sale under execution, or any part of the proceeds arising from the sale thereof, from the payment of the moneys thereby secured, or any part thereof, and the cost of such action and execution, as in and by the said above recited Obligation and the Conditions thereof, relation being thereunto had may more fully and at large appear.

Now this Indenture witnesseth, That the said Mortgagors as well for and in consideration of the premises, as of the aforesaid debt or principal sum of.....*Two thousand*..... Dollars, and for the better securing the payment of the same, with interest, together with all fines, and together with the monthly premium aforesaid, and together with the monthly contribution of..... *Ten*.....Dollars, on the said Shares of Stock owned by the said Mortgagors unto the said Mortgagee, its Successors and Assigns, in discharge of the said above recited Obligation as of the further sum of One Dollar, lawful money, unto..*them*..in hand well and truly paid by the said Mortgagee, at the time of the execution hereof, the receipt whereof is hereby acknowledged,..*have*..granted, bargained, sold, aliened, enfeoffed, released and confirmed, and by these presents..*do*.. grant, bargain, sell, alien, enfeoff, release and confirm unto the said Mortgagee, its Successors and Assigns,.....*ALL THAT CERTAIN lot or piece of ground with the three story brick messuage or tenement thereon erected SITUATE on the West side of Seventeenth Street at the distance of One hundred feet Southward from the South side of Ontario Street in the Twenty-eighth Ward of the City of Philadelphia. CONTAINING in front or breadth on said Seventeenth Street twenty feet and extending of that width in length or depth Westward between parallel lines at right angles to said Seventeenth Street One hundred and five feet. BEING the same premises which William Blackstone, et ux, by Indenture bearing date the*

Eighteenth day of March, 1896, and recorded at Philadelphia in Deed Book W. M. G. No. 8, page 283, etc., granted and conveyed unto the said Mary Doe in fee.....UNDER AND SUBJECT, nevertheless, to the payment of a certain mortgage debt or principal sum of Two Thousand Dollars with interest thereon as same shall grow due and become payable.

Together with all and singular the Buildings, Streets, Alleys, Passages, Ways, Waters, Water-Courses, Rights, Liberties, Privileges, Improvements, Hereditaments and Appurtenances whatsoever thereunto belonging, or in any wise appertaining, and the Reversions and Remainders, Rents, Issues and Profits thereof.

To have and to hold the said.....
lot or piece of ground with the messuage or tenement thereon erected,
.....Hereditaments and Premises hereby granted, or mentioned and intended so to be, with the Appurtenances, unto the said Mortgagee, its Successors and Assigns, to and for the only proper use and behoof of the said Mortgagee, its Successors and Assigns, forever.....*UNDER AND SUBJECT, nevertheless, to the payment of a certain mortgage debt or principal sum of Two thousand dollars with interest thereon as same shall grow due and become payable.....*

Provided Always, nevertheless, that if the said Mortgagors ..*their*..Heirs, Executors, Administrators or Assigns, do and shall well and truly pay, or cause to be paid, unto the said Mortgagee, its Successors or Assigns, the aforsaid debt or principal sum of..... *Two thousand*.....Dollars, together with interest thereon, and together with the fines and the monthly premium as aforesaid, on the days and times hereinbefore mentioned and appointed for payment of the same; and shall also well and truly pay, or cause to be paid, to the said Mortgagee, its Successors or Assigns, the above mentioned sum of .....*Ten*.....Dollars, at the regular meeting of every month, as and for the contribution of the said Shares of Stock as above mentioned; and shall, on or before the First day of September of each and every year, deliver to the said Mortgagee, its Successors or Assigns, receipts for all water rent and taxes of the current year assessed upon the mortgaged premises, and shall keep and maintain said fire insurance so assigned as aforesaid, according to the condition of the said above recited Obligation without any fraud or further delay, and without any deduction, defalcation or abatement to be made of any thing, for or in respect of any taxes, charges or assessments whatsoever, that then, and from thenceforth, as well this present INDENTURE, and the Estate hereby granted, as the said above recited Obligation shall cease, determine and become void, any thing hereinbefore contained to the contrary thereof, in any wise notwithstanding. **Provided further,** in case of default in the payment of the principal, interest or fines and the monthly premium as aforesaid, or any part thereof, or in default of the payment of the monthly contribution on the said Shares of Stock, as above particularly recited and mentioned, or any part thereof, for the space of six months after any payment thereof shall fall due, or in the prompt

and punctual maintenance of said fire insurance so assigned as aforesaid, or in such delivery to the said Mortgagee, its Successors or Assigns, on or before the First day of September of each and every year, of such receipts for such water rent and taxes of the current year assessed upon the mortgaged premises, or if the said Mortgagors shall not well and truly pay, or cause to be paid, the interest upon the first mortgage, and the ground rent, if such there be, the water rent and other municipal claims and taxes, on the above described premises, when the same shall become due and payable, and produce receipts therefor to the said Mortgagee within thirty days from the time when the same shall become due and payable, then and in such case the whole principal debt aforesaid shall immediately thereupon become due, payable and recoverable; and it shall and may be lawful for the said Mortgagee, its Successors or Assigns, to sue out forthwith a writ of Scire Facias upon this present Indenture of Mortgage, and to proceed at once thereon to recover the principal money hereby secured, and all interest, and all fines, and all monthly premiums thereon, as well as any contribution on said Shares of Stock then due, according to law, without further stay, any law or usage to the contrary notwithstanding. And it is hereby agreed, that in case the same or any part thereof has to be collected by process of law, that an attorney's fee of Five per cent shall be added to and collected as a part of the costs of such proceedings. And the said Mortgagors for..*themselves, their*..Heirs, Executors, Administrators and Assigns, hereby waive and relinquish all benefit that may accrue to them by virtue of any and every law made or to be made to exempt the said above described premises or any other property whatever, either real or personal, from levy and sale under execution, or any part of the proceedings arising from the sale thereof, from the payment of the moneys hereby secured, or any part thereof.

In witness whereof, the said parties to these presents have hereunto set their hands and seals. Dated the day and year first above written.

Sealed and Delivered in the presence of us:

John Bannister Gibson

Walter H. Lowrie

JOHN DOE SEAL

MARY DOE SEAL

On the ...*7th*...day of...*May*...A. D. 1913, before me, a Notary Public for the Commonwealth of Pennsylvania, residing in the City of Philadelphia, personally appeared the above-named.....*John Doe and Mary, his wife,*.....and in due form of law acknowledged the above or aforegoing INDENTURE OF MORTGAGE to be .....*their and each of their*.....act and deed, and desired the same might be recorded as such. Witness my hand and Notarial seal the day and year aforesaid.

DANIEL AGNEW
NOTARY PUBLIC.
My Commission expires
January 25, 1915

The Bond

§ 195.

Know all Men by these Presents

THAT.....*WE, JOHN DOE, of the City of Philadelphia, and MARY, his wife*.....(hereinafter called the Obligor*s*), are held and firmly bound unto *THE HANDEL AND HAYDN BUILDING AND LOAN ASSOCIATION* (hereinafter called the Obligee), in the sum of *FOUR THOUSAND*.....Dollars, lawful money of the United States of America, to be paid to the said Obligee, its certain Attorney, Successors or Assigns; To which payment, well and truly to be made. .*we* ..do bind....*ourselves, our*....Heirs, Executors and Administrators, and every of them, firmly by these Presents. Sealed with....*our*.... Seal*s* Dated the *Seventh*...day of.....*May*.....in the year one thousand nine hundred and.....*thirteen* (*1913*).....

The Condition of this Obligation is such, That if the above-bounden Obligor*s*. .*their*. .Heirs, Executors and Administrators, or any of them, shall and do well and truly keep and maintain at all times, until the full discharge of this Obligation, policy or policies of Fire insurance in good and approved company or companies, duly assigned as collateral security to the Obligee or its Successors or Assigns, to an amount not less than.....*TWO THOUSAND*..... Dollars, upon the buildings on the premises mortgaged by the Mortgage securing this Obligation, and shall and do well and truly pay, or cause to be paid unto the above-named Obligee, its certain Attorney, Successors or Assigns, the just sum of .....*TWO THOUSAND*..... Dollars, as aforesaid, at any time within One year from the date hereof, together with interest thereon, payable monthly, at the rate of Six per cent. per annum, and together with all fines imposed by the Constitution and By-Laws of the aforesaid Association, and a monthly premium of.....*Two Dollars and fifty cents*.....for the same, in like money, payable monthly, at the regular meeting of each and every month hereafter, and shall also well and truly pay, or cause to be paid unto the said Obligee, its Successors or Assigns, the sum of....*Ten*.... Dollars, at the said regular meeting of each and every month hereafter, as and for the monthly contribution on.....*Ten*.....Shares of the Capital Stock of the said Obligee, now owned by the said Obligor*s*, without any fraud or further delay; and shall also deliver to the said Obligee, its Successors or Assigns, on or before the First day of September of each and every year, receipts for all water rent and taxes of the current year assessed upon the premises described in the accompanying Indenture of Mortgage.

Provided, however, and it is hereby expressly agreed, that if at any time default shall be made in the payment of the said principal money when due, or of the said interest, or of the said fines, or of the said monthly premium, or the monthly contribution on said Stock, for the space of six months after any payment thereof shall fall due, or in

the prompt and punctual maintenance of said fire insurance so assigned as aforesaid, or in such delivery to the said Obligee, its Successors or Assigns, on or before the First day of September of each and every year, of such receipts for such water rent and taxes of the current year upon the premises mortgaged; or if the said Obligors shall not well and truly pay, or cause to be paid, the interest upon the first mortgage, and the ground rent, if such there be, the water rent and other municipal claims and taxes, on the premises particularly described in the Mortgage accompanying this Obligation, when the same shall become due and payable, and produce receipts therefore to the said Obligee within thirty days from the time when the same shall become due and payable, then and in such case the whole principal debt aforesaid shall, at the option of the said Obligee, its Successors and Assigns, immediately thereupon become due, payable and recoverable, and payment of said principal sum, and all interest, and all fines, and all monthly premiums due thereon, as well as any contribution on said Shares of Stock, then due, may be enforced and recovered at once, anything hereinbefore contained to the contrary thereof notwithstanding. And it is hereby further agreed, that if the same, or any part thereof, has to be collected by process at law, that an attorney's fee of Five per cent. shall be added to and collected as a part of the costs of such proceedings. And it is hereby certified and declared that the premium above stated was bid at open meeting by or on behalf of the said Obligors. . . ., and is hereby ratified. And the said Obligors. .for. . . .*themselves their*. . . .Heirs, Executors, Administrators and Assigns, hereby expressly waive and relinquish the right of inquisition on any real estate that may be levied upon to collect this obligation, and do hereby voluntarily condemn the same, and authorize the Prothonotary to enter upon the Fieri Facias. .*their*. .said voluntary condemnation, and. .*they*. .further agree that the said real estate may be sold on a Fieri Facias; and also, all benefit that may accrue to . . . . . .them by virtue of any and every law, made or to be made, to exempt the premises described in the Indenture of Mortgage herewith given, or of any other premises or property whatever, either real or personal, from levy and sale under execution, or any part of the proceeds arising from the sale thereof, from the payment of the moneys hereby secured, or any part thereof, and the cost of such action and execution, then the above Obligation to be void, or else to be and remain in full force and virtue.

Sealed and Delivered
in the presence of us:
John Bannister Gibson
Walter H. Lowrie

JOHN DOE SEAL

MARY DOE SEAL

The Warrant

§ 196.

To GEORGE SHARSWOOD, Esq., Attorney of the Court of Common Pleas, at Philadelphia, in the County of Philadelphia, in the State of Pennsylvania, or to any other Attorney, or to the Prothonotary of the said Court, or of any other Court, there or elsewhere.

Whereas, ...*JOHN DOE, of the city of Philadelphia, and MARY, his wife,*....(hereinafter called the Obligors..), in and by a certain Obligation, bearing even date herewith, do....stand bound unto *THE HANDEL AND HAYDN BUILDING AND LOAN ASSOCIATION*.....(hereinafter called the Obligee), in the sum of ....*FOUR THOUSAND*....Dollars, lawful money of the United States of America, conditioned to keep and maintain at all times, until the full discharge of this Obligation, a policy or policies of Fire insurance in good and approved company or companies, duly assigned as collateral to the Obligee or its Successors or Assigns, to an amount not less than....*TWO THOUSAND*....Dollars, upon the buildings on the premises mortgaged by the mortgage securing this Obligation, and conditioned for the payment of the just sum of.....*TWO THOUSAND*.....Dollars, as aforesaid, at any time within One year from the date thereof, together with interest thereon, payable monthly, at the rate of Six per cent. per annum, and together with all fines imposed by the Constitution and By-Laws of the aforesaid Association, and a monthly premium of.....*Two Dollars and fifty cents*.....for the same, in like money, payable monthly, at the regular meeting of each and every month thereafter, and should also well and truly pay, or cause to be paid unto the said Obligee, its Successors or Assigns, the sum of....*Ten*....Dollars, at the said regular meeting of each and every month thereafter, as and for the monthly contribution on....*Ten*....Shares of the Capital Stock of the said Obligee, now owned by the said Obligors without any fraud or further delay, and should also deliver to the said Obligee, its Successors or Assigns, on or before the First day of September of each and every year, receipts for all water rent and taxes of the current year assessed upon the premises described in the Mortgage accompanying said Obligation. **Provided,** however, and it is thereby expressly agreed, that if at any time default should be made in the payment of the said principal money when due, or of the said interest, or of the said fines, or of the said monthly premium, or the monthly contribution on said Stock for the space of six months after any payment thereof should fall due, or in the keeping and maintaining at all times fire insurance so assigned as aforesaid, or in the delivery to the said Obligee, its Successors or Assigns, on or before the First day of September of each and every year, of such receipts for such water rent and taxes of the current year assessed upon the mortgaged premises, or if the said Obligors shall not well and truly pay or cause to be paid, the interest upon the first mortgage and the ground rent, such there be, the water rent and other municipal claims and taxes, on the premises particularly described in the Mortgage accompanying this Obligation, when the same shall become due and payable, and produce receipts therefor to the said Obligee within thirty days from the time when the same shall become due and payable, then in such

case the whole principal debt aforesaid should, at the option of the said Obligee, its Successors and Assigns, immediately thereupon become due, payable and recoverable, and payment of said principal sum, and all interest, and all fines, and all monthly premiums due thereon, as well as any contribution on said Shares of Stock, then due, might be enforced and recovered at once, any thing thereinbefore contained to the contrary thereof notwithstanding. And it is thereby further agreed, that if the same, or any part thereof, has to be collected by process of law, then an attorney's fee of Five per cent. should be added to the amount so collected, as a part of the costs of such proceedings. And the said Obligors..for....*themselves, their*.... Heirs, Executors, Administrators and Assigns, thereby expressly waived and relinquished the right of inquisition on any real estate that may be levied upon to collect that obligation, and did voluntarily condemn the same, and authorize the Prothonotary to enter upon the Fieri Facias....*their*....said voluntary condemnation and...*they*... further agreed that said real estate may be sold on a Fieri Facias; and also all benefit that might accrue to them by virtue of any and every law, made or to be made, to exempt the premises described in the Indenture of Mortgage therewith given, or of any other premises or property whatever, either real or personal, from levy and sale under execution, or any part of the proceeds arising from the sale thereof, from the payment of the moneys thereby secured, or any part thereof:—**These** are to desire and authorize you, or any of you, to appear for.....*us, any of us our, any of our*.....Heirs, Executors or Administrators, in the said Court or elsewhere, in an appropriate form of action, there or elsewhere brought or to be brought against.....*us, any of us, our, any of our*.....Heirs, Executors or Administrators, at the suit of the said Obligee, its Successors or Assigns, on the said Obligation, as of any Term or Time past, present, or any other subsequent Term or Time there or elsewhere to be held, and confess or enter Judgment thereupon against.....*us, any of us our, any of our*.....Heirs, Executors or Administrators, for the sum of....*FOUR THOUSAND*....Dollars, lawful money of the United States of America, Debt, besides costs of suit, by *Non sum informatus, Nihil dicit* or otherwise, as to you shall seem meet: and for your or any of your so doing this shall be your sufficient warrant. And....*We*....do hereby, for....*ourselves, our*....Heirs, Executors and Administrators, remise, release and forever quit claim unto the said Obligee, its certain Attorney, Successors and Assigns, all and all manner of Error and Errors, Misprisions, Misentries, Defects and Imperfections whatever, in the entering of the said Judgment, or any Process or Proceedings thereon or thereto, or anywise touching or concerning the same.

IN WITNESS WHEREOF,....*we*....have hereunto set....*our* hand..*s*..and seal..*s*..the....*Seventh*....day of....*May*....in the year one thousand nine hundred and *thirteen* (*1913*).

Sealed and Delivered in the presence of us:
John Bannister Gibson
Walter H. Lowrie

JOHN DOE SEAL

MARY DOE SEAL

§ 197.

The following four pages contain a form (reduced in size) of application for a loan to be secured upon real estate. It consists of two sheets, the size of which usually is fourteen and a half by nine inches. The first page only is filled in by the applicant. The second page contains the report and recommendation of the committee, the certification of the Secretary that the resolution granting the loan was passed, and an acceptance of the loan by the borrower as granted. On the third page the Secretary certifies the proper instructions to the Solicitor, and below this the Solicitor certifies that settlement has been made in accordance therewith. The fourth page contains the endorsement and other information, so that the paper contains an entire history of the transaction and references to other books and papers in connection with the loan. When twice folded the endorsement on the fourth page is visible, and is of such a size that it can be placed in an envelope with the other papers.

To the President and Directors of

Perpetual Building and Loan Association

PHILADELPHIA.

GENTLEMEN:

The undersigned wishes to make a Loan to the amount of $ .....

in your Association, bids you a premium of ..... Cents per Share, payable monthly, and offers as Security for the regular payments, in accordance with the By-Laws of the Association, the following described property:

Location	
Description	
Size of Lot	
Occupancy	
Assessment	
Rental	
Stated Value	
Incumbrance to remain	
Equity	
Loan Desired	
Equity above Loan	
Remarks	

..... *Applicant.*

Address of Applicant .....

PHILADELPHIA,

To the President and Directors of the

Perpetual Building and Loan Association

GENTLEMEN:

We have examined the property described in this application and value the same as follows:

Value of Property, ... $.....

Value of ..... Shares ..... Series, . . . $.....

Total Value, ... $

Less Incumbrance, ... $

Leaves, ... $

In our opinion a loan of $ can be safely made on the property described in the application, and offer the following resolution:

Resolved, That a Loan of $ ..... be granted on this property. Insurance to be $ ....., and ..... Shares of our Association, of the ..... Series, are to be assigned as collateral security.

.....

Special Proviso: .....

.....

.....

.....

.....

.....

.....

Committee

I hereby ratify the within application and accept the loan as granted.

Witness my hand and seal this ..... day of 19

.....

PHILADELPHIA, ...

Mr. .....

Solicitor of the

Perpetual Building and Loan Association

SIR:

You are hereby directed to draw the necessary papers, procure title insurance or make searches and complete settlement for the loan granted in this application in accordance with the resolution of the board of directors.

Loan, $ Subject to prior lien of

On Shares of Series.

Premium bid on each loan share payable monthly.

Fire insurance $

Property

Special Proviso

Secretary.

I certify that settlement has been made for the loan described in this application in accordance with the resolution of the board of directors and the by-laws of this Association. Interest on the prior mortgage is payable to

from the day of

It is insured against fire in the

and taxes and water rent are paid to inclusive.

ADDRESS OF BORROWER

REMARKS

Solicitor.

Property .....

APPLICATION FOR LOAN AND ACTION THEREON

Offered as Security by

.....

TO THE

Perpetual

Building and Loan Association

Amount, $.....

Premium, $.....

COMMITTEE:

.....

.....

.....

Notice to Committee Sent	.....
Passed	.....
Minute Book Folio	.....
Certificate	.....
Order	.....

§ 198.

Notice to be sent to members of appraisal Committee by Secretary.

Shareholders' Building and Loan Association

Philadelphia, _____ *191*__

Mr. _____

Dear Sir:

Kindly view and report on the following application:

Location _____

Size of Lot _____

Description _____

_____

Assessed Value $ _____ *Stated Value $* _____

Incumbrance to remain _____

Loan desired _____

Rental _____

Applicant _____

Report at meeting _____

Remarks: _____

_____

Yours respectfully,

Committee:

_____

Secretary

STOCK LOAN

$1,000.00 Philadelphia, *May 9*, 1913.

For Value Received I promise to pay, at any time within one year from the date hereof, to the order of *COLUMBIA AVENUE BUILDING ASSOCIATION, ONE THOUSAND* Dollars, together with interest thereon, at the rate of six per cent. per annum, payable monthly, and also the monthly contributions on the hereinafter mentioned shares of stock, at the regular meeting of said Association and together with all fines imposed by the by-laws of the said Association.

Provided however, and it is hereby expressly agreed that if at any time default shall be made in the payment of the said debt, when due, or of the said interest, or of the said fines, or in the monthly contribution on said shares of stock for the space of six months after any payment thereof shall become due and payable, then in such case the whole debt aforesaid shall at the option of the said Association, its successors or assigns, immediately become due, payable and recoverable, and payment of the said debt, and all interest, and all fines, then due, may be enforced and recovered at once, anything herein contained to the contrary notwithstanding.

And I, do hereby irrevocably constitute and appoint *EDMUND WRIGLEY*, or whoever may be Secretary of said Association my true and lawful attorney, for me and in my name and behalf, to sell, assign and transfer unto said Association Certificate No. *537*, *19th* Series, for *15* shares of the Capital Stock of the said Association, now standing in my name on the books of the said Association, as security for this obligation, and for that purpose to make and execute all necessary acts of assignment and transfer, and one or more persons under him to substitute with like power.

And further I do hereby authorize and empower any Attorney of any Court of Record of Pennsylvania, or elsewhere, to appear for me and confess or enter judgment against me for the amount of the above debt, and all interest and fines then due, with or without declaration, with costs of suit, release of errors, without stay of execution, and with 5 per cent. added for collection fees; and I also hereby waive the right of inquisition of any and all real estate that may be levied upon to collect this obligation, and do hereby voluntarily condemn the same, and I do further agree that the said real estate may be sold on a Fieri Facias and authorize the Prothonotary to enter upon the Fieri Facias my said voluntary condemnation, and I hereby waive and release all relief from any and all appraisement, stay or exemption laws of the Commonwealth of Pennsylvania, or of any other State, now in force or hereafter to be passed.

In Witness Whereof, I have hereunto affixed my hand and seal the day and year aforesaid.

Witnessed by

H. PAUL JONES
WILLIAM C. SMITH

JAMES ADAMS (SEAL)

§ 200.

COLLATERAL BOND

Know All Men by These Presents, THAT we, JOHN DOE and RICHARD ROE, of the City of Philadelphia, hereinafter called the Obligors, are jointly and severally held and firmly bound unto the COLUMBIA AVENUE BUILDING ASSOCIATION NO. 2, hereinafter called the Obligee, in the sum of FIVE THOUSAND DOLLARS, lawful money of the United States of America, to be paid to the said Obligee, its certain Attorney, Successors or Assigns; To which payment, well and truly to be made, we do bind ourselves, jointly and severally, our Heirs, Executors and Administrators, and every of them, firmly by these Presents.

Whereas one ROBERT KENNEDY has executed and delivered to the said Obligee his bond and mortgage, bearing date the Twenty-fifth day of October, 1912, and *intended to be* recorded in the Office for the Recording of Deeds in and for the City and County of Philadelphia in Mortgage Book No. page etc., and is secured upon *all that certain* lot or piece of ground with the three story brick messuage or tenement thereon erected SITUATE on the West side of Seventeenth Street at the distance of One hundred feet Southward from the South side of Ontario Street in the Twenty-eighth Ward of the City of Philadelphia. CONTAINING in front or breadth on said Seventeenth Street twenty feet and extending of that width in length or depth Westward between parallel lines at right angles to the said Seventeenth Street One hundred and five feet; as in said Indenture of Mortgage is more particularly described, as by reference thereto may more fully and at large appear. Said Mortgage and Bond are given to secure the principal sum of Twenty-five hundred Dollars, together with interest, premiums, fines, monthly contributions on stock, etc., as in said Bond and Mortgage is particularly mentioned and set forth.

And Whereas WE, the said JOHN DOE and RICHARD ROE have agreed to perform all the covenants, agreements, stipulations and conditions and to make all the payments required to be made by the said ROBERT KENNEDY, his heirs, executors, administrators and assigns, by reason of said Bond and Mortgage if he or they do not do so when they are to be performed or paid.

Now The Condition of This Obligation is Such, that if the said ROBERT KENNEDY, his heirs, executors, administrators or assigns, or any of them, shall well and truly perform all the covenants, agreements, stipulations and conditions and make all the payments required to be made by the said ROBERT KENNEDY by reason of said Bond and Mortgage to the said Obligee, then this obligation to be void or else to be and remain in full force and virtue.

Provided, however, that in case of default by the said ROBERT KENNEDY or his heirs, executors, administrators or assigns, or in case of default by us, or either of us, or our heirs, executors, administrators or assigns, in any of the covenants, agree-

ments, stipulations and conditions, or in any of the payments required to be made by reason of the said Bond and Mortgage or of this obligation, then the whole principal sum of this obligation is to become due and payable and recoverable immediately.

And it is hereby further agreed, that if the same, or any part thereof, has to be collected by process of law, then an attorney's fee of Five per cent. should be added to the amount so collected, as a part of the costs of such proceedings. And the said Obligors, for themselves, jointly and severally, their heirs, executors, administrators and assigns, hereby expressly waive and relinquish the right of inquisition on any real estate that may be levied upon to collect this obligation, and do voluntarily condemn the same, and authorize the Prothonotary to enter upon the Fieri Facias our said voluntary condemnation and we further agree that the said real estate may be sold on a Fieri Facias; and also all benefit that might accrue to us, or any of us, by virtue of any and every law, made or to be made, exempting any property whatever, either real or personal, from levy and sale under execution, or any part of the proceeds arising from the sale thereof, from the payment of the moneys hereby secured, or any part thereof: THESE are to desire and authorize JOHN TURNKEY, ESQ., Attorney of the Court of Common Pleas, at Philadelphia, in the County of Philadelphia, in the State of Pennsylvania, or to any other Attorney, or to the Prothonotary of the said Court or of any other Court, there or elsewhere, to appear for us, or any of us, our, or any of our heirs, executors or administrators, in the said Court or elsewhere in an appropriate form of action, there or elsewhere brought or to be brought against us, or any of us, our, or any of our heirs, executors or administrators, at the suit of the said Obligee, its successors or assigns, on this obligation, as of any Term or Time past, present or any other subsequent Term or Time there or elsewhere to be held, and confess or enter judgment thereupon against us, or any of us, our or any of our heirs, executors or administrators for the sum of FIVE THOUSAND DOLLARS, lawful money of the United States of America, Debt, besides cost of suit, by NON SUM INFORMATUS, NIHIL DICIT, or otherwise, as to you shall seem meet: and for your or any of your so doing this shall be your sufficient warrant. And we do hereby, for ourselves, our Heirs, executors and administrators, remise, release and forever quit claim unto the said Obligee, its certain attorney, successors or assigns, any and all manner of error and errors, misprisions, misentries, defects and imperfections whatever, in the entering of said judgment, or any process or proceedings thereon or thereto, or anywise touching or concerning the same.

In Witness Whereof, we have hereunto set our hands and seals the Twenty-first day of May in the year one thousand nine hundred and thirteen (1913).

Sealed and Delivered
in the presence of us

Silas M. Clark
Henry Green

JOHN DOE SEAL
RICHARD ROE

§ 201.

Handel and Haydn Building and Loan Association

This statement to repay loan holds good till *May 21, 1913.*

With regard to *114 North 3rd Street.*

Philadelphia, *May 16, 1913.*

In account with *Samuel Boyle,* Certificate No. *1671,*
20 Shares of the *31st* Series issued *June, 1909.*

Dr.	Loan	*$3500*	
	Due at .....meeting.....	*$11.88*	*$3511.88*
Cr.	Paid in on Shares, calculated to .....meeting	*$960.00*	
	Withdrawal interest	*$63.06*	*$1023.06*
	Balance Due		*$2518.82*

Also Satisfaction Fee, $1.50 (Separate Check).

JOHN T. GUILFOYLE, Secretary.
1526 North Gratz Street.

If the borrower wishes to repay the loan and retain the stock he should pay the principal of the loan and amount due at next meeting. If the withdrawal value of the stock is to be applied on account of the loan the following power of attorney should be executed.

Know All Men By These Presents, That I, the undersigned, for value received, do hereby irrevocably constitute and appoint JOHN T. GUILFOYLE, to be my true and lawful attorney, for me and in my name and behalf, to sell, assign and transfer unto HANDEL AND HAYDN BUILDING AND LOAN ASSOCIATION, my *twenty* SHARES on the CAPITAL STOCK of the HANDEL AND HAYDN BUILDING AND LOAN ASSOCIATION, Certificate No. *1671* of *31st* Series. Also to indorse order for the withdrawal value of above Shares.

And further, one or more persons under him to substitute with like power.

In Witness Whereof, *I* have hereunto set *my* hand and seal this *19th* day of *May,* 1913.

Witnesses Present

PHILIP STERLING
HARRY FELIX

SAMUEL BOYLE SEAL

§ 202.

Frankford Ave. Building and Loan Association

Meets First Wednesday of Each Month, at 8 P. M.
AT TRENTON AVENUE AND YORK STREET.

Philadelphia, *October 23*, 1912.

FIRST PAYMENT STATEMENT

In account with *David Stewart.*

Certificate No. *351*, *5* Shares, *7th* Series.

Property, *5540 Chestnut Street.*

Loan, *$1,000.* Date of Series, *May, 1912.*

Dues, *May* to *October* inc.,			
six months at *$5.00*			*$30.00*
Entrance fee, *five* Shares at 25 cents			*$1.25*
Interest earned on shares			*.47*
Regular Monthly Payment	*November*, Dues	*$5.00*	
	November, Interest	*$5.00*	
	November, Premium	*$1.25*	*$11.25*
Total			*$42.97*

CHARLES HEERMAN, Secretary.

TABLE OF CASES CITED

[The numbers refer to Pages]

A

B

[The numbers refer to Pages]

C

[The numbers refer to Pages]

D

E

F

G

[The numbers refer to Pages]

H

I

J

K

[The numbers refer to Pages]

L

M

N

O

[The numbers refer to Pages]

P

Q

R

S

[The numbers refer to Pages]

T

U

V

W

Y

Z

INDEX*

A

*Prepared by Albert B. Guilbert

B

D

E

F

G

H

I

J

L

M

N

O

P

T

U

W